

September 29, 2020

Via Electronic Filing

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Reporting Threshold for Institutional Investment Managers (SEC Rel. No. 34-89290; File No. S7-08-20)

Dear Ms. Countryman:

The Investment Adviser Association (**IAA**)¹ appreciates the opportunity to comment on the Commission's proposal to raise the reporting threshold for Form 13F reports by institutional investment managers, eliminate the omission threshold for individual securities, require managers to provide additional identifying information, modernize the structure of data reporting, and amend the instructions on Form 13F for confidential treatment requests.²

We commend the Commission for its efforts to modernize regulatory requirements that have not been updated in decades. We support raising the \$100 million threshold for Form 13F reporting but recommend a substantially more modest increase that takes into account how the users and uses of Form 13F reports have evolved since the reporting threshold was originally adopted. We make the following recommendations that we believe will better balance the goals of transparency and limiting regulatory burdens, especially on smaller advisers:

- A. The Commission should raise the reporting threshold more moderately than proposed – from \$100 million to \$500 million – and should permit voluntary filings under the threshold.

¹ The IAA is the largest organization dedicated to advancing the interests of SEC-registered investment advisers. For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

² *Reporting Threshold for Institutional Investment Managers*, 85 Fed. Reg. 46016 (proposed July 31, 2020), <https://www.sec.gov/rules/proposed/2020/34-89290.pdf> (**Proposal**).

- B. The Commission should not eliminate the omission threshold for Form 13F and should consider raising this threshold as part of its review of the reporting threshold every five years.
- C. The staff should conduct its initial future analysis sooner than five years if it significantly raises the reporting threshold.
- D. The Commission should not require additional identifying information in Form 13F. It should study on a more holistic basis issues raised by requiring the use of licensed numbers in regulations.
- E. The Commission should not make technical amendments to the well-established rounding conventions or how a security's value is reported.
- F. The Commission should make a technical amendment to eliminate Form 13F's requirement for a manual signature and expressly permit the retention of electronic signatures and records for Form 13F.

Our comments are discussed below.

A. The Commission should raise the reporting threshold more moderately than proposed – from \$100 million to \$500 million – and should permit voluntary filings under the threshold.

We agree with the Commission that the current \$100 million threshold for Form 13F reporting is outdated and should be raised. We also agree that the threshold is no longer in line with Congress's original intent to provide transparency into the concentration of institutional ownership of equities holdings of larger managers that have the potential to significantly affect the securities markets, while limiting the burdens associated with filing the reports to the largest institutional investment managers.³ Over the intervening years, however, as more and more institutional investment managers have been required to file a Form 13F, the ways in which market participants have used the information in the reports have evolved beyond looking to them to fill in the trading information gaps of the largest managers. Market participants, including some of our members, view the reports as providing important public benefits that would be largely eliminated if the Commission were to raise the reporting threshold in the amount proposed. We believe that the Commission would strike a better balance between maintaining fair, open, and orderly markets and reducing burdens on smaller institutional investment managers by raising the threshold to \$500 million, rather than the \$3.5 billion proposed.

³ According to the Proposal: "The 1975 Amendments Senate Report reasoned that, by setting the threshold at \$100 million, the burdens associated with filing Form 13F would be limited to 'the largest institutional investment managers' and, therefore, the new filing requirements could be 'implemented rapidly with the least amount of unnecessary costs and burdens on the potential respondents.'" Proposal at 9.

Today, a very large number of SEC-registered investment advisers must file a Form 13F,⁴ and we believe that most IAA members now file Form 13F reports. The compliance burden of filing these reports is more acute for our smaller members. Our larger members tend to contract with third-party vendors to assist with Form 13F reporting. For these advisers, technology and other resources have lessened the burdens of Form 13F compared to other regulatory and compliance burdens that they face. Our smaller members, by contrast, tend to handle the reporting in-house. We understand that the software that many smaller advisers use can be difficult to work with and that manual efforts are often needed to comb through the data, read and detect errors in HTML files, and reconcile CUSIP numbers that systems do not recognize because they begin with a zero.⁵ Raising the threshold would provide these smaller advisers with welcome relief.

On the other hand, we understand from our members that firms across all sizes greatly value the data they obtain from Form 13F reports and, even for many smaller advisers, the ability to access that data outweighs their own filing burdens. These firms prioritize preserving as much transparency as possible over raising the Form 13F reporting threshold. For other small advisers, however, the burdens clearly outweigh the benefits.

The benefits provided by Form 13F data have evolved over time and are many. Today, Form 13F information is extremely valuable to a wide array of investment advisers and others. Traditional asset managers, for example, find the information useful in managing actively managed strategies, particularly in the small and mid-cap space. Sponsors to closed-end funds rely on Form 13F reports to monitor activist shareholder activity (before reporting persons reach the beneficial ownership or investment levels that trigger Schedule 13D, Schedule 13G, or Form N-PART filings). Form 13F gives more information about the diversity of shareholder ownership than data from these other sources. Exchange-traded funds utilize Form 13F data to help satisfy their regulatory obligations, understand their shareholder base, determine how concentrated ownership is in their shares, and provide educational materials and other services to their shareholders. Some smaller managers also are aided by the visibility into the markets that reporting confers. In addition, when they file Form 13F reports they may benefit from being recognized as an investor, which can facilitate research and meetings with current and prospective issuers, thereby increasing the potential for expanding the firm or asset base.

Institutional investors that allocate their capital to investment managers also rely on Form 13F reports as an important part of their due diligence in tracking those managers. The reports provide more extensive and granular data on specific holdings than these investors might

⁴ As of December 31, 2018, 5,089 institutional investment managers filed Form 13F holdings reports (Form 13F-HR) and an additional 1,570 managers filed form 13F-NT notice reports. Proposal at 16 and n. 40. We do not have data on how many of these filers are SEC-registered investment advisers but we believe that the number is substantial.

⁵ The Commission may want to consider facilitating the filing of Form 13F through a system, similar to the Investment Adviser Registration Depository, that does not require the use of HTML files, special software, or the assistance of third-party vendors.

otherwise receive and help them hold managers accountable as to their actual portfolio holdings. The holdings-level details in these reports provide a better understanding of the portfolio than the more high level information that is included in quarterly letters, for example. Form 13F reports thus help institutional investors identify potential mismatches between a stated strategy and actual investments; concentration levels and potential crowded trades; liquidity; long-term purchase and sale decisions; shifts in a manager's portfolio as its AUM expands or contracts; and performance by sectors. Institutional investors often seek out pools managed by small- and mid-sized managers in which to invest. If the filing threshold were raised significantly, these institutional investors would lose an important risk management tool that helps them keep a close watch on the smaller managers that they retain.⁶

We strongly believe in transparent markets. We agree that transparency contributes to safer and fairer markets and is an important goal. And, as these examples demonstrate, Form 13F reports greatly enhance the transparency and safety of the system as a whole. However, transparency needs to be balanced against other considerations, including whether the compliance burdens on small managers are justified. Accordingly, we recommend that the Commission raise the reporting threshold sufficiently to provide relief to the smallest managers but not so high that managers, investors, and the markets lose the myriad benefits of the data.

The Commission asks whether the proposed threshold of \$3.5 billion is appropriate and, if another threshold would be more appropriate, what the threshold should be and why.⁷ While we understand the Commission's rationale for proposing \$3.5 billion as the new threshold and we recognize that the rationale for a lower threshold is a departure from Congress's original intent, we believe that, given the evolution in how Form 13F reports are used, a lower threshold than that proposed is necessary and appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets.⁸ We recommend, instead, that the Commission revise the threshold to \$500 million.⁹ We believe that an updated threshold of \$500

⁶ As demonstrated by these examples, Form 13F data provide many valuable benefits even with the current 45-day delay period. While we appreciate that the Commission is proposing changes to the scope of managers required to file reports on Form 13F before considering other potential amendments to the Form (Proposal at 12, n. 28), we note that we strongly oppose shortening the 45-day delay in Form 13F's reporting deadline. This lag time effectively avoids most of our members' serious concerns about front running or copying of their investment strategies and we are concerned that shortening the time would revive those concerns.

⁷ Proposal at 26 (Question 1).

⁸ Section 13(f)(5) of the Securities Exchange Act of 1934 requires that the Commission, in exercising its authority under section 13(f), "determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets."

⁹ Given that the IAA represents a very broad spectrum of investment advisers, we note that some of our members support the Commission's proposed threshold of \$3.5 billion, while some of our members oppose any increase in the \$100 million reporting threshold.

Raising the threshold from \$100 million to \$500 million would approximate the 3.54 percent average annual rate of inflation since 1975. See <https://www.inflationtool.com/us-dollar/1975-to-present-value>. This increase, while

million would preserve many of the benefits of greater transparency into the markets while relieving smaller managers of the compliance burdens related to filing, and that this strikes an appropriate balance.¹⁰

We also recommend that, to accommodate those smaller managers that wish to continue filing Form 13F reports, the Commission permit voluntary filing for institutional investment managers that exercise investment discretion between \$100 million and \$500 million in Section 13(f) securities. Permitting voluntary filing would allow smaller managers to continue to be recognized as investors, should they so elect, and to receive the benefits they associate with that recognition.

B. The Commission should not eliminate the omission threshold for Form 13F and should consider raising this threshold as part of its review of the reporting threshold every five years.

Form 13F allows, but does not require, a manager to omit holdings below a certain share limit and value limit, *i.e.*, holdings of fewer than 10,000 shares (or less than \$200,000 principal amount of convertible debt securities) and less than \$200,000 aggregate fair market value (the “**omission threshold**”). The Commission is proposing to eliminate the omission threshold for Form 13F on the basis that, if the reporting threshold is substantially increased, the omission threshold would no longer be necessary or appropriate and the incremental increase in cost of including securities holdings information below an omission threshold is likely immaterial.

We believe, however, that the Commission is undervaluing the importance of the omission threshold to managers of all sizes. We understand from our members that the omission threshold would continue to provide important relief regardless of the reporting threshold amount. Even large firms rely on this *de minimis* standard, as it can be burdensome to identify which of hundreds of small positions are eligible for reporting on Form 13F, regardless of the reporting threshold. In addition, in our view, any marginal benefit to the Commission or the public from disclosure of stock holdings whose absolute values are not of a material size is clearly outweighed by the burdens on managers to identify and report these small positions. We thus request that the Commission maintain an omission threshold for all managers.

We further recommend that the Commission consider updating the omission threshold every five years as part of its review of the reporting threshold. This would help to ease the reporting burdens of firms of all sizes, account for the effects of inflation, and assist firms whose clients transfer small legacy positions to a new adviser.

modest, would strike a compromise by providing relief to over 60 percent of advisers. *See* Table 1 of the Proposal at 16-17, which shows that 62.6 percent of filers would be below a threshold of \$500 million or more.

¹⁰ If the Commission nonetheless decides to substantially increase the reporting threshold, and bases the adjustment on market growth, we suggest that the Commission use a five-year average stock market rate of growth to minimize the effects of market fluctuations. Proposal at 26 (Question 4).

C. The staff should conduct its initial future analysis sooner than five years if it significantly raises the reporting threshold.

We fully support the proposal that the staff conduct reviews of the Form 13F reporting threshold every five years and, if appropriate, recommend an adjustment to the Commission. However, if the Commission raises the reporting threshold significantly higher than a moderate increase such as the one that we recommend, we suggest that the staff consider conducting the first of these reviews sooner than five years after raising the threshold in order to evaluate the impact on the market and market participants of a substantial increase in the threshold. Subsequently, we support conducting these reviews every five years.

D. The Commission should not require additional identifying information in Form 13F. It should study on a more holistic basis issues raised by requiring the use of licensed numbers in regulations.

We believe that Form 13F File Numbers have worked well and do not see the need for filers to provide additional identifying information such as CRD numbers and SEC filing numbers. In addition, CUSIP numbers are recognized as a basic and simple way to identify a security. Switching to an alternative identifier would be burdensome and could have the potential for error and we thus recommend that the Commission not replace CUSIP numbers with another identifier at this time.

As a general matter, however, we believe that building requirements into regulations that subject registrants to ongoing related licensing fees and other obligations raises important policy issues. As we have previously stated to the Commission,¹¹ S&P holds the license to CUSIP numbers and has been imposing increasingly burdensome fees on investment advisers, investors, and others for the acquisition, retention, and use of CUSIP identifiers.¹² We understand that S&P has been contacting investment advisers and others seeking to collect significant licensing fees for the use of CUSIP identifiers regardless of the source or use of such numbers. S&P evidently takes the position that even using CUSIP identifiers in a firm's internal database serves as a basis for a request for licensing fees. Licensing fees appear to range from approximately \$10,000 per year for an institutional user to hundreds of thousands of dollars per year for unlimited global

¹¹ See Letter from The Bond Dealers of America, the IAA, and the Government Finance Officers Association of the United States and Canada (Sept. 9, 2014), available at <https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/140909cmnt.pdf> (expressing deep concerns regarding the operation of the CUSIP system, Commission rules that require the use of CUSIP numbers, and the collection of fees by Standard & Poor's (S&P) for usage of CUSIP's standard security identifiers); see also Letter from The Bond Dealers of America, the IAA, and the Government Finance Officers Association of the United States and Canada (Nov. 10, 2010), available at <https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/101110cmnt.pdf>.

¹² CUSIP identifiers are assigned to new securities issues by the CUSIP Service Bureau, which is operated by S&P. S&P is the CUSIP Service Bureau contract administrator for the American Bankers Association, the owner of the CUSIP identifiers.

licenses. We therefore urge the Commission to initiate a holistic review of S&P's licensing practices relating to CUSIP identifiers and consider whether requiring the use of licensed identification numbers in regulatory filings of all types (including but not limited to Form 13F) poses potential liability, subjects users to the payment of use fees, or is otherwise problematic.

E. The Commission should not make technical amendments to the well-established rounding conventions or how a security's value is reported.

Because of the operational challenges and costs that implementation would entail, we request that the Commission not amend Form 13F to require all dollar values listed on Form 13F to be rounded to the nearest dollar. For the same reason, we also request that the Commission not remove the requirement that filers omit the "000" when reporting dollar values on Form 13F. We are not aware of data inaccuracies resulting from current reporting requirements and believe, therefore, that the implementation costs would outweigh any marginal benefit from these changes.¹³

F. The Commission should make a technical amendment to eliminate Form 13F's requirement for a manual signature and expressly permit the retention of electronic signatures and records for Form 13F.

We recommend that the Commission make a technical amendment to eliminate Form 13F's requirement for a manual signature and expressly permit that the signature of the person signing a report on Form 13F may be retained electronically. This would mean that filers would no longer be required to retain a manually signed copy of Form 13F. Over 20 years ago, the E-Sign Act¹⁴ authorized the creation of electronic contracts, as well as the use of electronic records relating to such agreements. The E-Sign Act provided uniform national standards for the use of electronic signatures, which have grown in use and importance over the past few years. Having the option to retain an electronic signature would substantially reduce the burdens of obtaining manual signatures under certain circumstances, such as the current COVID-19 pandemic.¹⁵

Our members appreciate the staff's recognition of the challenges raised by the manual signature requirement and its statement providing relief regarding the authentication document retention requirements to those affected by COVID-19.¹⁶ However, filers are still required to

¹³ The Commission could consider other amendments to improve the current reporting regime, such as excluding nondiscretionary holdings.

¹⁴ See Electronic Signatures in National and Global Commerce Act (E-Sign Act), Public Law No. 106-229 (June 30, 2000).

¹⁵ For example, the Internal Revenue Service recently announced that it will temporarily permit digital signatures on more forms through the end of 2020 to limit in-person contact between employees and taxpayers or their representatives.

¹⁶ See Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (June 25, 2020), available at <https://www.sec.gov/corpfin/announcement/rule-302b-regulation-s-t-covid-19-update>.

Ms. Vanessa A. Countryman
U.S. Securities and Exchange Commission
September 29, 2020
Page 8 of 8

retain a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting their signature; indicate the date and time when the signature was executed; hold it until offices re-open; and establish and maintain policies and procedures governing this process. This has proven problematic for filers and we believe more expansive, permanent relief is warranted. First, some individuals are not able to print documents when working remotely. Second, due to the extended time many in the industry have been working remotely, there is a risk that manually signed documents may become lost, misplaced, or damaged, or that confidentiality may be compromised. Electronic signatures have the advantages of a time stamp and automated document retention. Accordingly, as part of the Commission's initiative to modernize Form 13F, we urge the Commission to eliminate Form 13F's requirement for a manual signature and expressly permit the retention of electronic signatures and records for Form 13F.

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We appreciate the Commission's consideration of our comments on the proposed amendments to Form 13F and would be happy to provide any additional information that may be helpful. Please contact the undersigned or Associate General Counsel Laura Grossman at (202) 293-4222 if we can be of further assistance.

Respectfully Submitted,

/s/ Gail C. Bernstein

Gail C. Bernstein
General Counsel

cc: The Honorable Jay Clayton, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Dalia Blass, Director, Division of Investment Management