

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

October 2, 2020

VIA ELECTRONIC MAIL

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number File Number S7-08-20, Reporting Threshold for Institutional Investment Managers

Dear Chairman Clayton:

I write to express my strong concerns with the proposed amendments to Form 13-F and rule 13f-1 under the Securities and Exchange Act of 1934 (Proposed Amendments).¹ As an initial matter, I have encouraged the Securities and Exchange Commission (SEC), on several occasions, to prioritize efforts that are responsive to the coronavirus disease 2019 (COVID-19) pandemic and halt rulemaking unrelated to the pandemic. However, as this proposal demonstrates, the Commission has refused to do so. Instead, inconsistent with its mandate to protect investors, maintain fair and orderly markets, and facilitate capital formation, the Commission continues to propose and adopt deregulatory rules that suppress shareholder rights, impair shareholder engagement, reduce capital market transparency and decrease investor protection, overall.

For that reason, I cannot support the Proposed Amendments and urge the Commission to withdraw the proposal. As an initial matter, a number of publicly traded companies have reported that the Proposed Amendments would make it more difficult for them to engage with their shareholders. Further, the Proposed Amendments would reduce transparency of market information and will deprive investors of information about the companies they own and that they rely upon. The Proposed Amendments also constitute an improper use of the Commission's exemptive authority. Finally, the Proposed Amendments represent a disturbing trend of the Commission moving away from its mission.

Background

Form 13-F and rule 13f-1 require institutional investment managers to make periodic disclosures regarding certain equity holdings (13f Securities) over which the manager exercises investment discretion.² Institutional investment managers must disclose this information by filing a report on Form 13-F, but are only required to file the report when account holdings, in the aggregate, reach a \$100 million threshold.³ The Proposed Amendments would raise that reporting threshold from \$100 million to \$3.5 billion.⁴ Meaning, if adopted, the Proposed Amendments would increase the reporting threshold by an astonishing

¹ See Reporting Threshold for Institutional Investment Managers, (Release No. 34-89290; File No. S7-08-20), July 22, 2020 (Proposal), available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf>.

² See Exchange Act § 13(f), 15 U.S.C. § 78m(f); 17 C.F.R. § 240-13f-1.

³ *Id.*

⁴ See Proposal, fn.1 supra, at p.5, available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf>.

35 times the current threshold. This would weaken protections for investors and would result in the reduced transparency of more than \$2.3 trillion in assets.⁵

Impairment to Shareholder Engagement

A number of publicly traded companies have reported that the Proposed Amendments would impair their ability to engage with shareholders.⁶ These companies note that they rely on the information provided in 13F reports to identify their shareholders, allowing the company to engage with them on important matters.⁷ Thus, impeding publicly traded companies' access to this information would, by extension, impede shareholders' access to relevant investment information.⁸ These companies have also reported that it would be difficult to obtain this information for any other source.⁹

This is unacceptable. Shareholder engagement and outreach is important, not only to the US publicly traded companies that want to identify their shareholders, it is important to their investors. In fact, Chairman Clayton, you have said that, “[s]hareholder engagement is a hallmark of our markets.”¹⁰ I agree. Shareholder engagement was already lower than desired and is at risk of decreasing during the COVID-19 pandemic. Presumably recognizing this, on March 13, 2020, the SEC staff published “Guidance to Promote Continued Shareholder Engagement, Including at Virtual Annual Meetings, for Companies and Funds Affected by [COVID-19].”¹¹ Still, a few months after publishing that guidance, the SEC’s proposed rule would create another obstacle in the way of shareholder engagement.

Reduced Transparency of Market Information

In discussing the importance of transparency, Chairman Clayton, quoting Joseph Pulitzer, you said, “There is not a crime, there is not a dodge, there is not a trick, there is not a swindle, there is not a vice which

⁵ See National Investor Relations Institute Executive Alert, SEC Proposes to Reduce Equity Ownership Transparency (July 13, 2020), available at https://www.niri.org/NIRI/media/NIRI/Executive-Alert/NIRI-Executive-Alert_-_SEC-Proposes-to-Reduce-Equity-Ownership-Transparency-7-13-2020.pdf (as of Sept. 20, 2020).

⁶ See Comment Letter from Jennifer J. Kent, Executive Vice President of Administration & General Counsel and Secretary, Quad/Graphics, Inc. to Ms. Vanessa Countryman Secretary, Securities and Exchange Commission (Sept. 24, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7825730-223747.pdf>; Comment Letter from James R. Chapman Executive Vice President, Chief Financial Officer and Treasurer, Dominion Energy, Inc. to Ms. Vanessa Countryman Secretary, Securities and Exchange Commission (Sept. 22, 2020) (explaining that, “... under the proposed rules, our company would lose information on the identity and positions of 72% of shareholders that are currently required to file under existing rules.”), available at <https://www.sec.gov/comments/s7-08-20/s70820-7801797-223636.pdf>; Comment Letter from Kashif Rashid, General Counsel, Nevro Corp. to Ms. Vanessa Countryman Secretary, Securities and Exchange Commission (Sept. 21, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7797965-223611.pdf>,

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Speech by SEC Chairman Jay Clayton, Governance and Transparent at the Commission and in Our Markets, Remarks at the PLI 49th Annual Institute on Securities Regulation – New York, N.Y. (Nov. 8, 2017), available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>, as of Sept. 22, 2020.

¹¹ See Securities and Exchange Commission Press Release, “SEC Staff Provides Guidance to Promote Continued Shareholder Engagement, Including at Virtual Annual Meetings, for Companies and Funds Affected by [COVID-19]” (March 13, 2020), available at <https://www.sec.gov/news/press-release/2020-62>, as of Sept. 22, 2020.

does not live by secrecy.”¹² There is a glaring disconnect between that sentiment and the Proposed Amendments. Market transparency means that investors should have ready access to market information. This is important because it strengthens investor trust in our capital markets and helps investors make better investment decisions, including decisions regarding their retirement funds. As one investor indicated in his response to the Proposed Amendments, “Your proposed rule change would mean that I lose all insight into the important actions of the professional investors who control \$2.3 trillion in assets, and the rule change focuses especially on those most important to my retirement.”¹³

The comments in response to the Proposed Amendments also, unequivocally, demonstrate the harm that adopting this proposal would do in terms of marketplace trust. One comment letter explains that: “The reporting threshold for institutional investment managers should not be increased. More transparency should be the goal, not less. Any consideration for changing the threshold certainly should not be of the magnitude being contemplated. Why would the SEC want to hide this information from financial advisors?”¹⁴ Another investor explained that, “Withholding information concerning trading of individuals with a high net worth or companies, hedge fund managers etc. allows for unfair advantage in the market. It should be transparent as much as possible. If you change the 100 million cap. rule, you will be going against your own public support of transparency.”¹⁵

The Proposed Amendments Represent an Improper Use of the SEC’s Exemptive Authority

In 1975, Congress amended the Securities Exchange Act of 1934 to include section 13(f)(1). The Congressional amendment provided, in part, that:

Every institutional investment manager ... which exercises investment discretion with respect to accounts holding equity securities of a class described in section 13(d) (1) of this title 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.¹⁶

¹² See Chairman Jay Clayton Speech, fn. 6, *supra*, available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>, as of Sept. 22, 2020.

¹³ See Comment Letter from John Lawson (Aug. 8, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7538011-222176.htm>.

¹⁴ See Comment Letter from Kenneth J. Natzke (Sept. 10, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7757524-223228.htm>

¹⁵ See Comment Letter from Barry K. Slatton, Independent Investor (Aug. 4, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7517611-222031.htm>.

¹⁶ See Pub. L. No. 94-29 (June 4, 1975), available at <https://www.govinfo.gov/content/pkg/STATUTE-89/pdf/STATUTE-89-Pg97.pdf#page=1>.

The amendment granted the SEC with broad exemptive authority.¹⁷ That authority, however, was not absolute. The amendments explained that:

In exercising its authority under this subsection, the Commission shall 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 *or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection.*¹⁸

The present action is, clearly, inconsistent with investor protection. Further, the release for the Proposed Amendments indicates that Commission's analysis was, primarily, predicated on whether the Proposed Amendments would reduce the compliance burdens for certain firms.¹⁹

Critically, the SEC's exemptive authority must be consistent with the purpose of the subsection.²⁰ The purpose was clear. In adopting these amendments, Congress wrote that the reporting threshold should be "at least \$100,000,000 or *such lesser amount* (but in no case less than \$10,000,000)". The \$3.5 billion increase the SEC is proposing is entirely outside of those parameters and, therefore, it is inconsistent with the purpose of the subsection. Congress could have provided the Commission with authority, exemptive or otherwise, to raise the reporting threshold, but it elected not to do so.

The Commission is Moving away from its Mission

Critically, the Proposed Amendments are part of a steady stream of rule proposals which, alone, represent regulatory missteps. However, when these proposals are viewed in conjunction with each other they represent questionable regulatory policy and demonstrate a departure from the SEC's mission to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."

For example, on October 2, 2019, the SEC issued a proposed exemptive order that would municipal advisors to participate in the direct placement of municipal securities, without being registered as a broker or a dealer, under the Exchange Act.²¹ Despite industry concern about the proposed exemptions, on June 16, 2020, the Commission issued a similar, temporary exemptive order that would remain in place until December 31, 2020.²² The temporary exemptive order did address certain public concerns, but others remained unaddressed. For example, the temporary exemptive order still allows municipal advisors to receive transaction-based compensation without being registered with the Commission as a broker or a dealer.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See generally, Proposal fn. 1, *supra*, available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf>, as of Sept. 22, 2020.

²⁰ See Pub. L. No. 94-29 (June 4, 1975), available at <https://www.govinfo.gov/content/pkg/STATUTE-89/pdf/STATUTE-89-Pg97.pdf#page=1>.

²¹ See Proposed Exemptive Order Granting a Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors, File No. S7-16-19, available at <https://www.sec.gov/rules/exorders/2019/34-87204.pdf>.

²² See Order Granting a Temporary Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors (June 16, 2020), available at <https://www.sec.gov/rules/exorders/2020/34-89074.pdf>.

On July 22, 2020, the SEC adopted amendments to its proxy solicitation rules.²³ These amendments will increase issuer involvement in the proxy voting advice process and will mean that this advice will no longer be independent. Then, on September 23, 2020, the SEC adopted changes to the procedural requirements and resubmission thresholds under the shareholder proposals rule.²⁴ Those changes will make it nearly impossible for smaller investors, who are owners of a company, to repeatedly propose important changes, like public disclosure of a company's risk to climate change or the diversity of its board and management.²⁵ In fact, an analysis on proxy filings from 2006 to 2018 conducted by Principles for Responsible Investment found that under this new rule, 399 resubmitted shareholder proposals would fail to make the ballot, nearly half of which were environmental, social, and governance proposals.²⁶

Conclusion

For all the reasons stated in this letter, again, I urge the Commission to rescind this proposal. Thank you and I look forward to continued, constructive engagement with the Commission on these, and other, issues.

Sincerely,



MAXINE WATERS
Chairwoman

cc: The Honorable Patrick McHenry, Ranking Member

²³ See Exemptions from the Proxy Rules for Proxy Voting Advice, File No. File No. S7-22-19, available at <https://www.sec.gov/rules/final/2020/34-89372.pdf>.

²⁴ See Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, SEC, 84 Fed. Reg. 66458, (Dec. 4, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-24476.pdf>.

²⁵ See Letter from Fiona Reynolds, Chief Executive Officer, Principles for Responsible Investment to Vanessa Countryman, Secretary, Securities and Exchange Commission (Feb. 3, 2020), available at https://d8g8t13e9vf2o.cloudfront.net/Uploads/q/h/l/pris72319_february032020_882134.pdf.

²⁶ Letter from Principles for Responsible Investment to the Securities and Exchange Commission (Feb. 3, 2020), available at https://d8g8t13e9vf2o.cloudfront.net/Uploads/q/h/l/pris72319_february032020_882134.pdf