September 29, 2020

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

Re: Reporting Threshold for Institutional Investment Managers (File No. S7-8-20)

Secretary Countryman:

The Americans for Financial Reform Education Fund (AFREF) appreciates the opportunity to comment on the above referenced proposed rule (the "Proposal") by the Securities and Exchange Commission (the "SEC" or the "Commission") concerning rules for fundraising in private markets. Members of the AFR Education Fund coalition include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

We urge the Commission to reconsider its misguided proposal to raise the reporting threshold under Form 13F for institutional investment managers. Such a decision would significantly obstruct transparency across publicly traded stocks and contradict the Commission's stated mission to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets.

This proposal would raise the Form 13F reporting threshold by an astounding thirty five fold, from $100 million to $3.5 billion in eligible securities. Clearly this represents a very striking reduction in reporting requirements. The threshold change would by the Commission's own estimates reduce filings from investment managers by 89.2%.[2] This reduction would harm investors seeking to understand the ownership patterns and management influences of companies they own, issuers looking to engage their shareholders, academics and data providers who are able to conduct studies with the information provided, and the public and policy makers seeking to understand important public policy issues.

The justification behind "modernizing" the reporting requirement is ahistorical and flawed: The Commission attempts to justify the increase in the threshold by stating that the increase to $3.5 billion reflects a proportionate increase in the percentage of the total equity market covered by the disclosure requirements as compared to the percentage of the equity market covered by

[1] A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/
[2] Securities and Exchange Commission, File No. S7-08-20, Reporting Threshold for Institutional Investment Managers (Jul. 10, 2020), at 17, https://www.sec.gov/rules/proposed/2020/34-89290.pdf

the $100 million requirement when the rule was first passed in 1975. However, this claimed justification ignores the Congressional intent behind the passage of Section 13(f). Based on the Senate report, this intent was explicitly based on the increasing significance of institutional investment managers in the equity market, not on any goal of covering a fixed percentage of the total equity market.[3] Congress highlighted issues such as the concentrated power of institutional investors in affecting public companies and individual investors. Since the 1970s the importance of institutional investors in the market and the issues raised by their power have only grown.

At times the Proposal seems to reflect an underlying goal of somehow minimizing the number of reporting entities while covering a certain percentage of the market. But this goal is in no way justified by either statutory intent or by any overall cost benefit analysis reflecting the costs of disclosure as compared to the benefits for issuers and investors of having timely and accurate disclosure of institutional equity ownership in public companies.

The argument behind "modernizing" the reporting requirement fails to consider that the existing standards are already far too weak: Many institutional investors are now using options strategies and other derivatives that are not subject to reporting under the existing Form 13F to accumulate the economic equivalent of large equity positions. The current $100 million threshold is based on the total value of eligible securities and not the entire market value of the portfolio including equity-based derivatives and options. Thus, many of the institutional funds who would supposedly benefit from the proposed rule change have already been utilizing loopholes in the existing rule to avoid reporting significant positions.[4]

Such evasion often involves selling a put option which would be economically similar to buying stock, except is not subject to reporting on Form 13F while ordinary shares are.[5] A recent example of this is involves hedge fund Elliott Management, which surprised the management of AT&T and its shareholders on September 9, 2019 by suddenly declaring a $3.2 billion stake in the company via "common stock and economic equivalents" in a letter to shareholders.[6] Elliott Management's 13-F filing on November 14, 2019 (reflecting the fund's holdings of only eligible securities at the end of September) however, only shows a $118.25 million stake from its AT&T stock holdings alone.[7] Having amassed this position, the hedge fund then demanded aggressive changes from AT&T's management, including replacing its CEO, laying off workers, and selling key divisions.

If one hedge fund that already managed $42 billion in assets as of June[8] can already avoid basic reporting under the current rules, how much worse would this problem become if the Commission were to raise the reporting requirement thirty five times as laid out in this proposal?

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[3] Report to Accompany S.249, Securities Act Amendments of 1975, Sen. Rep. No. 94-75, at 85, 94th Cong. 1975 ("Senate Report"), available at https://bit.ly/3c2Endd

[4] Moore, Simon. Forbes. "SEC 13-F Proposal Draws Attention To Copycat Funds". Jul 12, 2020. https://bit.ly/2G6znIS

[5] Fintel. "Making Sense of the Ownership Filings – the 13D, 13G, and 13F". May 4, 2018. https://bit.ly/3cC2nEh

[6] Businesswire. "Elliott Management Sends Letter to Board of Directors of AT&T". Sep 9, 2019. https://bwnews.pr/36evUmj

[7] SEC Edgar. Form 13-HR filed by Elliott Management Corp. Nov. 14, 2019. https://bit.ly/3n35ERU

[8] Sherman, Alex. CNBC. "Hedge fund Elliott Management shifts to elephant hunting as fund size ballons". Jun 14, 2020. https://cnb.cx/2GagEw3

Finalizing this proposal would make it completely routine for hedge funds to blindside other companies, investors, and market participants with sudden announcements of highly material equity stakes, that could then be used to manipulate management decisions.

It is particularly starting that at the very same time that the Commission seems bent on reducing the ability of ordinary shareholders to influence companies they own through the open and public shareholder resolution process, it would also make a proposal which would increase the extent to which hedge funds and institutional investors could amass large stakes behind the scenes and thus increase their control of companies in an opaque and hidden manner.

The Commission is disregarding the demands to increase reporting requirements from investor groups it is supposed to serve: Several market participants, as well as the Commission's own Inspector General, have been calling on the SEC to do the opposite of what is proposed in this release and change reporting requirements to require *more* information to be disclosed.

The Office of the Inspector General has been suggesting for nearly a decade[9] that the 13F reporting be changed to:

- Update the list of assets that need to be reported
- Require reporting of an investor's average holdings during the period to avoid "window dressing"
- Disclose the aggregate purchases and sales during the quarter
- Break out how much of the holdings are held in proprietary accounts versus customer accounts

The NYSE, Society of Corporate Secretaries and Governance Professionals (SCSGP), and National Investor Relations Institute in 2011 called for reducing the current 45-day reporting deadline to 15 days.[10] These groups highlighted the "massive technological advances in recordkeeping and reporting systems over [30 years]"; their comments suggest that 'modernizing' the rules should mean shortening the timeline

The Commission should withdraw this proposal and instead consider updating 13F reporting to capture more information

Given the serious problems with the existing 13F reporting, which would be made far worse by the changes contemplated in this proposal, as well as calls from the IG and others for the Commission to move in the opposite direction by requiring more information on share ownership, not less, we believe the Commission should withdraw its proposal.

If the Commission believes the current 13F rule is outdated and in need of modernization, the Americans for Financial Reform Education Fund would be pleased to engage with the Commission on regarding updating the rule to align with the SEC's core mission.

[9] SEC Office of Inspector General. "Review of the SEC's Section 13(f) Reporting Requirements". Sep. 27, 2010. https://bit.ly/2S68bwd

[10] NYSE Euronext, SCSGP, NIRI. "Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934. Feb. 1, 2013. https://bit.ly/33ZO7Ry

We appreciate your consideration of this important matter. For further discussion, please contact Andrew Park at andrew@ourfinancialsecurity.org or Marcus Stanley at marcus@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund