SEC Proposal to Substantially Reduce Form 13F Reporting Obligations

July 2020

On July 10, 2020, the Securities and Exchange Commission proposed[1] increasing the reporting threshold that triggers the filing of a Form 13F from $100-million worth of "13(f) securities" (i.e., most U.S.-listed securities and a defined list of traded derivatives) to $3.5 billion. The $100-million threshold has not changed since Congress amended the Securities Exchange Act of 1934 in 1975 to add Section 13(f) (with the SEC promulgating the corresponding rules in 1978). The proposal would also direct the SEC staff to review the Form 13F reporting threshold every five years and, if appropriate, to recommend an appropriate adjustment to the Commission.

The proposal would also eliminate the ability of covered managers to omit small positions, which is currently permitted for 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 stated purpose for the change is to provide relief for smaller investment managers and to bring the filing obligations back into line with the original intent of capturing only "the largest institutional managers" (the $3.5-billion position was determined to be the 2020 equivalent, by market value, of the 1975 $100-million figure). The proposal asserts that over 90%, by dollar value, of the holdings data currently disclosed through Form 13F will continue to be reported utilizing a $3.5-billion threshold.

This proposal has already proven to be contentious. A strong dissent[2] from one commissioner, Allison Herren Lee, expressed concern about the potential loss of marketplace transparency that could result from the change, noting that the public, private and academic sectors all utilize Form 13F data and that the proposal "would eliminate access to information about discretionary accounts managed by more than 4,500 institutional investment managers representing approximately $2.3 trillion in assets." She also questioned the potential cost savings of the proposal, calling them "greatly overstated and wholly inconsistent with the Commission's past analysis."

Most strikingly, Commissioner Lee noted that Section 13(f)(1) of the Securities Exchange Act sets the threshold for Form 13F reporting of holdings of covered equity securities at $100 million "or such lesser amount" as the Commission may determine. She contends that the proposal "does not wrestle

[1] https://www.sec.gov/rules/proposed/2020/34-89290.pdf.

[2] https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10.

with this language at all, and asserts uncritically" that the SEC has the authority to raise the reporting threshold, while "Congress appears to have said otherwise[.]"

The proposal also contains technical amendments that would:

- Require filers to include CRD and SEC filing numbers;
- Require values be rounded to the nearest dollar (instead of to the nearest one thousand dollars);
- Require values to be expressed as complete, whole numbers in lieu of omitting three decimal places (e.g., a security with a value of $5 million would be reported as $5,000,000, instead of $5,000);
- Remove the 80 character limit imposed on the information filers can include on the cover page and the summary page and the 132 character limit on the information table;
- Remove certain duplicative definitions; and
- Amplify the Form 13F instructions.

Over 150 comments were received within the first week, nearly all of which oppose the proposal on the transparency point.

*This article appeared in the July 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, **click here**.*

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