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SEC PROPOSES $3.4 BILLION INCREASE TO CURRENT $100 MILLION REPORTING THRESHOLD FOR FORM 13F

Jul 13, 2020

On Friday, July 10, the SEC proposed amendments to Form 13F to substantially increase the reporting threshold to $3.5 billion from the current level of $100 million and make certain other changes. This would be the first change to the threshold since the form was adopted in 1978.

SEC rules require institutional investment managers to file a Form 13F for each quarter if the accounts over which they exercise investment discretion hold more than $100 million of “13(f) securities”, which primarily consist of U.S. exchange-traded stocks, shares of closed-end investment companies and shares of ETFs. The form was adopted to promote greater visibility into the investment activities and holdings of larger investment managers.

According to the SEC, the new threshold would reflect proportionally the same market value of U.S. equities that $100 million represented in 1975, when Congress directed the SEC to develop a reporting regime. The SEC believes the change would result in disclosure of over 90% of the dollar value of the holdings data currently reported while eliminating the Form 13F filing requirement and its attendant costs for the nearly 90% of filers that are smaller managers. Further, the aggregate value of section 13(f) securities reported by managers would represent approximately 75% of the U.S. equities market as a whole, as compared with 40% in 1981, the earliest year for which Form 13F data is available.

At the same time, the SEC acknowledges that some of the holdings data that would no longer be reported relates to smaller portfolio companies in which larger managers may be less likely to invest. However, it notes that some alternative data is available, such as Form N-PORT filed by registered investment management companies, and reports on Schedules13D or 13G by managers that acquire more than 5% of a voting class of equity securities.

Other proposed changes would include:

- Directing the SEC staff to review the Form 13F reporting threshold every five years and recommend an appropriate adjustment, if any

- Eliminating the ability of managers to omit certain small positions, thereby increasing the overall holdings information required from larger managers
- Require managers to report additional numerical identifiers to enhance the usability of the information provided on the form
- Amending the instructions relating to requests for confidential treatment of Form 13F information to conform to a recent U.S. Supreme Court decision.

One Commissioner issued a strong dissent, expressing concern about the loss of transparency, due to the loss of information about accounts managed by 4,500 managers representing approximately $2.3 trillion in assets. She noted that:

"[NIRI] wrote a detailed case for *greater transparency* and more timely access to 13F filings, explaining how critical the data is for issuers in promoting 'greater corporate-investor engagement.' Moreover, it states that greater transparency 'is of particular concern to smaller issuers that cannot afford to pay for stock surveillance firms that analyze trading patterns and try to determine which investors are buying or selling shares.' The proposal does not address this concern, discuss potentially reduced shareholder engagement, or balance the interests of issuers, and particularly small issuers, against the population of institutional investment managers affected by this proposal, i.e., those with discretion over between $100 million and $3.5 billion." [Citations omitted]

She also raised concerns about, among other things, the arguable lack of statutory authority to increase the threshold and the analysis of projected savings in compliance costs.

The SEC requests comments during the 60-day period following publication in the Federal Register. As noted by the dissenting Commissioner, Form 13F filings represent one of the key sources used by public companies and investors to identify and monitor activists and other stockholders – particularly accumulations or other changes that would not otherwise be reportable. As a result, it will be interesting to follow the input that comes from market participants and other constituencies.

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