

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 240 and 249

[Release No. 34-89290; File No. S7-08-20]

RIN: 3235-AM65

### Reporting Threshold for Institutional Investment Managers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the “Commission”) is proposing to update the reporting threshold for Form 13F reports by institutional investment managers for the first time in 45 years, raising the reporting threshold from \$100 million to \$3.5 billion to reflect the change in size and structure of the U.S. equities market since 1975, when Congress adopted the requirement for these managers to file holdings reports with the Commission. The proposal also would amend Form 13F to increase the information provided by institutional investment managers by eliminating the omission threshold for individual securities, and requiring managers to provide additional identifying information. The Commission is also proposing to make certain technical amendments, including to modernize the structure of data reporting and amend the instructions on Form 13F for confidential treatment requests in light of a recent decision of the U.S. Supreme Court.

**DATES:** Comments should be received on or before [insert date 60 days after publication in FEDERAL REGISTER].

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission’s Internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-08-20 on the subject line;

*Paper Comments:*

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-08-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Zeena Abdul-Rahman, Senior Counsel, Mark T. Uyeda, Senior Special Counsel, at (202) 551-6792, or Brian McLaughlin Johnson, Assistant Director, at (202) 551-6792, Investment Company Regulation Office,

Division of Investment Management, Securities and Exchange Commission, 100 F Street NE,  
Washington, DC 20549-8549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for public comment amendments to 17 CFR 240.13f-1 (“rule 13f-1”) and Form 13F (referenced in 17 CFR 249.325) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”).

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## I. BACKGROUND

The Commission is proposing to:

- Amend rule 13f-1 and Form 13F to raise the reporting threshold from \$100 million to \$3.5 billion to account for the changes in the size and structure of the U.S. equities market since 1975; and
- Eliminate the omission threshold for individual securities on Form 13F.

The Commission further proposes to amend Form 13F to require an institutional investment manager (“manager”) that files Form 13F to provide certain identifying information:

- If the manager has a number assigned to the manager by the Central Registration Depository (“CRD”) system of the Financial Industry Regulatory Authority, Inc. (“FINRA”) or by the Investment Adviser Registration Depository (“IARD”) system (“CRD number”), the manager would be required to provide the CRD number; and
- If a manager has a filing number assigned to the manager by the Commission (“SEC filing number”), the manager would be required to provide the SEC filing number.<sup>1</sup>

Finally, the Commission proposes to make certain technical amendments to modernize the information reported on Form 13F, consistent with its existing structured eXtensible Markup Language (“XML”) format, and to modify the standard applied to certain types of requests to the

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<sup>1</sup> The term “institutional investment manager” includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. *See* section 13(f)(6)(A) of the Exchange Act [15 U.S.C. 78m(f)(6)]. The term “person” includes any natural person, company, government, or political subdivision, agency, or instrumentality of a government. *See* section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)].

Commission for confidential treatment of Form 13F information (“Form 13F CTRs”) to make such standard consistent with a recent U.S. Supreme Court decision.<sup>2</sup>

### **A. Overview of Section 13(f) and Rule 13f-1**

Adopted in 1975 as part of the Securities Acts Amendments of 1975 (“1975 Amendments”),<sup>3</sup> section 13(f) of the Exchange Act<sup>4</sup> requires a manager to file a report with the Commission if the manager exercises investment discretion with respect to accounts holding certain equity securities (“13(f) securities”)<sup>5</sup> having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million.<sup>6</sup> Rule 13f-1 requires that managers file quarterly reports on Form 13F if the accounts over which they exercise investment discretion hold an aggregate of more than \$100 million in 13(f) securities.<sup>7</sup> The information reported on Form 13F becomes publicly available upon filing, unless the manager has filed a Form 13F CTR.<sup>8</sup> A Form 13F CTR is confidential pending review pursuant to 17 CFR 240.24b-

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<sup>2</sup> *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019).

<sup>3</sup> Pub. L. No. 94-29, 89 Stat. 97 (1975).

<sup>4</sup> 15 U.S.C. 78m(f).

<sup>5</sup> Rule 13f-1(c) under the Exchange Act defines “section 13(f) securities” to mean equity securities of a class described in section 13(d)(1) of the Exchange Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. The Commission is required under section 13(f)(4) to publish a list of section 13(f) securities, which can be found at [www.sec.gov/divisions/investment/13flists.htm](http://www.sec.gov/divisions/investment/13flists.htm).

<sup>6</sup> Section 13(f)(1) of the Exchange Act [15 U.S.C. 78m(f)(1)].

<sup>7</sup> *See* General Instruction 3 of Form 13F. Form 13F requires managers to disclose, for example, the name, Form 13F file number, and address of the manager, and, for each security being reported, the name of the issuer, title of class, CUSIP, market value, amount and type of security, and whether the manager has investment discretion and voting authority for that security.

<sup>8</sup> *See* Sections 13(f)(4) and (5) of the Exchange Act and 17 CFR 240.24b-2 (“rule 24b-2”) under the Exchange Act. A Form 13F CTR consists of two parts: a written request letter (the “application,” per 17 CFR 240.24b-2(b)(2)) and a paper, confidential Form 13F *for the same calendar quarter as the public Form 13F* that includes only the equity holding(s) for which confidential treatment is being requested (the “confidential portion,” per 17 CFR 240.24b-2(b)(1)). A Form 13F CTR must be filed in paper with the Secretary of the Commission. *See* 17 CFR 240.24b-2(b)(3). While section 13(f)(4) of the Exchange Act gives the Commission discretion to determine whether to grant Form 13F CTRs, section 13(f)(4) also prohibits the Commission from publicly disclosing information that identifies the securities held by the

2(c) (“rule 24b-2(c)”). The staff of the Division of Investment Management has delegated authority from the Commission to grant and deny Form 13F CTRs, and to revoke a grant of confidential treatment for any Form 13F CTR.<sup>9</sup>

Section 13(f) of the Exchange Act gives the Commission broad rulemaking authority to determine the size of the institutions required to file reports, the format and frequency of the reporting requirements, and the information to be disclosed in each report.<sup>10</sup> Section 13(f)(1) authorizes the Commission to set the reporting threshold in an amount “of at least \$100,000,000 or such lesser amount” by rule.<sup>11</sup> In addition, section 13(f)(3) authorizes the Commission to exempt any manager or class of managers from the reporting requirements of section 13(f).<sup>12</sup> The 1975 Amendments Senate Report stated that the Commission would “have authority to raise or lower” the threshold.<sup>13</sup> The 1975 Amendments Senate Report also indicated that, in setting the reporting threshold for Form 13F, the Commission should consider, among other factors, the compliance burdens of reporting and the marginal informational value provided by the disclosure.<sup>14</sup> Additionally, in exercising its authority under section 13(f), the Commission is

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account of a natural person, estate, or trust (other than a business trust or investment company).

<sup>9</sup> 17 CFR 200.30-5(c-1) and (c-2).

<sup>10</sup> 15 U.S.C. 78m(f)(1); *see also* Filing and Reporting Requirements Relating to Institutional Investment Managers, Exchange Act Release No. 14852 (June 15, 1978) [43 FR 26700, 26701 (June 22, 1978)] (“13F Adopting Release”) at text accompanying n.5.

<sup>11</sup> However, the Commission does not have the authority to lower the reporting threshold under section 13(f)(1) to less than \$10 million. *See* 15 U.S.C. 78m(f)(1).

<sup>12</sup> 15 U.S.C. 78m(f)(3).

<sup>13</sup> *See* Securities Acts Amendments of 1975: Hearings on S. 249 before a Subcomm. of the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. (S. Report No. 94-75) (1975), at 107 (“1975 Amendments Senate Report”).

<sup>14</sup> *Id.* at 86 (stating that, in establishing a reporting threshold, the Commission should “balance such costs and burdens to the public interest that would be served by the expected informational value of the marginal equity securities holdings which would then be subject to the reporting provisions”).

required to consult with other agencies, including federal, state, and self-regulatory organizations.<sup>15</sup>

In 1978, the Commission implemented the reporting requirement of section 13(f) by adopting rule 13f-1 and Form 13F.<sup>16</sup> In designing Form 13F, the Commission stated that it attempted to structure the form in a manner that would provide useful data regarding holdings that would impact the markets, while minimizing the form’s reporting burdens.<sup>17</sup> In 1999, the Commission required electronic filing of public Form 13F reports through the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system.<sup>18</sup>

## **B. Legislative History and Subsequent Developments**

Section 13(f) was added to the Exchange Act following a study the Commission conducted at Congress’s direction, which concluded that there were certain “gaps in information about the purchase, sale and holdings of securities by major classes of institutional investors.”<sup>19</sup>

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<sup>15</sup> 15 U.S.C. 78m(f)(5). Specifically, the statute requires the Commission to consult with the Comptroller General of the United States, the Director of the Office of Management and Budget, national securities exchanges, registered securities associations, and the appropriate regulatory agencies, federal and state authorities which, directly or indirectly, require reports from managers of information substantially similar to that called for by section 13(f). Section 3(a)(34)(F) defines “appropriate regulatory agency” for these purposes as the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. 15 U.S.C. 78c(a)(34)(F) (defining “appropriate regulatory agency” when used with respect to a person exercising investment discretion over an account). We will complete our consultation with these agencies during the comment period of this proposal in accordance with section 13(f)(5).

<sup>16</sup> See 13F Adopting Release, *supra* footnote 10.

<sup>17</sup> See Reporting by Institutional Investment Managers of Information with Respect to Accounts over which Investment Discretion is Exercised, Exchange Act Release No. 13396 (Mar. 22, 1977) [42 FR 16831, 16832 at n.7 (Mar. 30, 1977)]. See also 13F Adopting Release, *supra* footnote 10.

<sup>18</sup> See Rulemaking for EDGAR System, Investment Company Act Release No. 23640 (Jan. 12, 1999) [64 FR 2843 (Jan. 19, 1999)]. In 2013, the Commission modernized the filing format of Form 13F by replacing the plain-text ASCII format with a structured XML format and accompanying online form, but did not make any substantive changes to the Form. See Adoption of Updated EDGAR Filer Manual, Investment Company Act Release No. 30515 (May 14, 2013) [78 FR 29616 (May 21, 2013)].

<sup>19</sup> See 13F Adopting Release, *supra* footnote 10 at n.3 and accompanying text.



The section 13(f) disclosure program had three primary goals. First, to create a central repository of historical and current data about the investment activities of institutional investment managers. Second, to improve the body of factual data available regarding the holdings of institutional investment managers and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Third, to increase investor confidence in the integrity of the U.S. securities markets.<sup>20</sup>

Legislative history indicates that the reporting threshold of section 13(f) was designed so that reporting would cover a large proportion of managed assets, while minimizing the number of reporting persons. The \$100 million threshold that was adopted thereby limited the burdens of reporting, particularly on smaller managers. The 1975 Amendments Senate Report noted that, at the time of the section's adoption, approximately 300 persons—holding about 75 percent of the dollar value of all institutional equity security holdings—would be subject to the reporting requirements.<sup>21</sup> 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

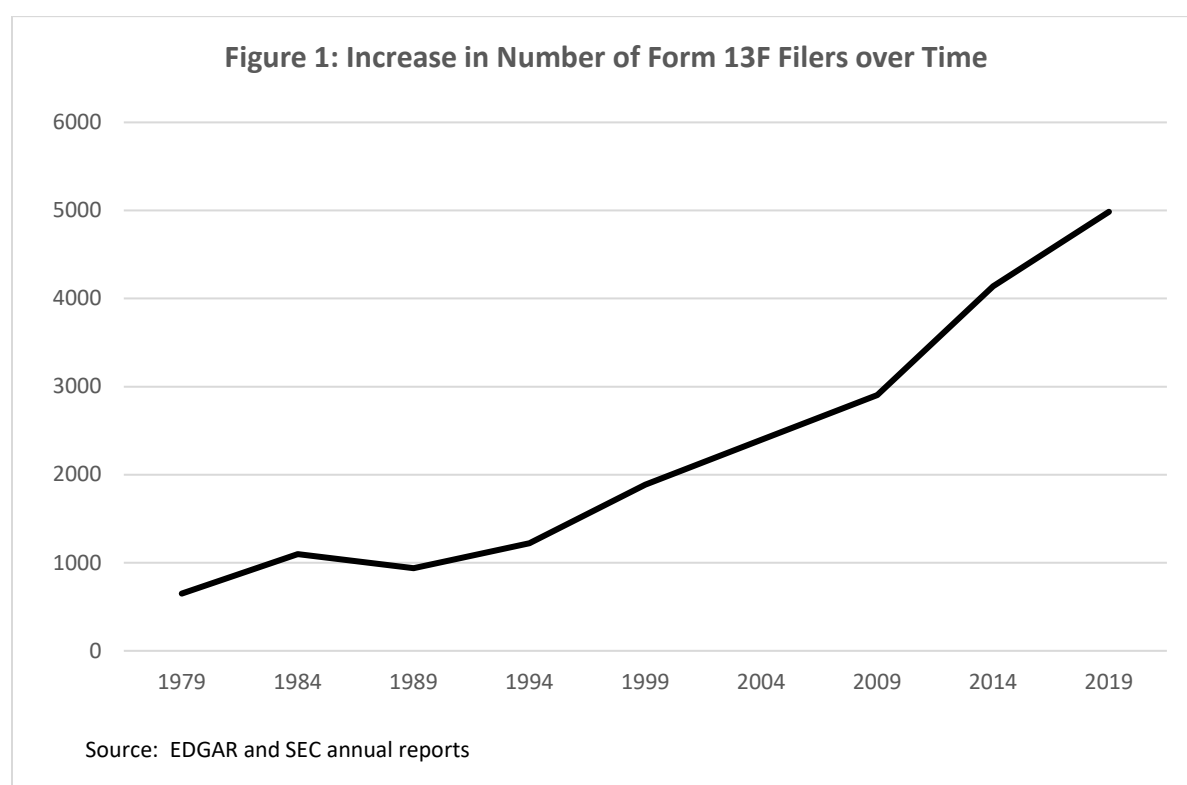
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<sup>20</sup> See 13F Adopting Release, *supra* footnote 10 at n.4 and accompanying text; *see also* Thomas P. Lemke and Gerald T. Lins, *Equity Holdings by Institutional Investment Manager: An Analysis of Section 13(f) of the Securities Exchange Act of 1934*, 43 BUS. LAW 93, 94 n.7 (Nov. 1987); Office of the Inspector General, *Review of the SEC's 13(f) Reporting Requirements* (Sept. 27, 2010), available at <https://www.sec.gov/about/offices/oig/reports/audits/2010/480.pdf> (“OIG Report”).

<sup>21</sup> The 1975 Amendments Senate Report indicated that section 13(f) would increase public availability of information regarding the securities holdings of institutional investment managers. *See supra* footnote 13, at 85.

“implemented rapidly with the least amount of unnecessary costs and burdens on the potential respondents.”<sup>22</sup>

Since 1975, the relative significance of managing \$100 million in securities as compared with the overall size of the U.S. equities market has declined considerably. More managers have become subject to the Form 13F reporting obligation, even though \$100 million represents a much smaller fraction of the U.S. equities market, which has grown substantially in aggregate size. Figure 1 shows the rise in the number of managers that file Form 13F over time.<sup>23</sup>

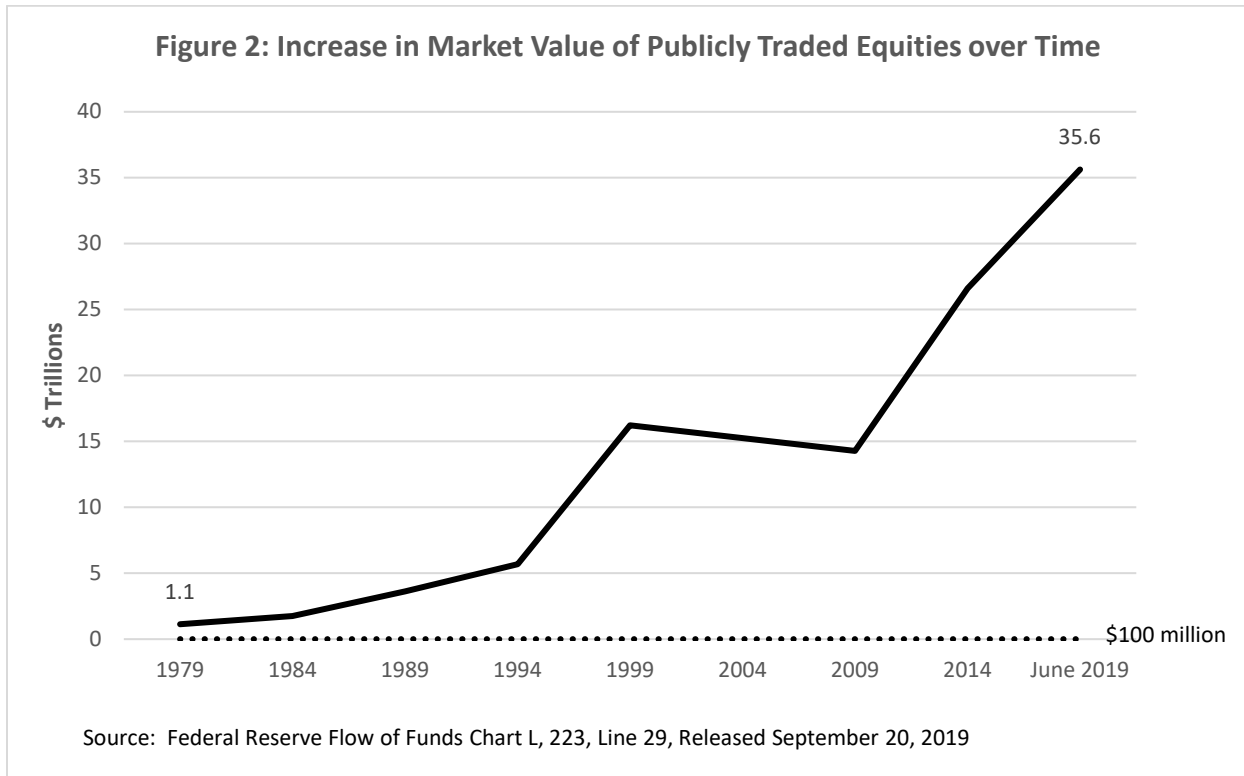


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<sup>22</sup> 1975 Amendments Senate Report, *supra* footnote 13, at 87.

<sup>23</sup> Data presented after 1999 only includes managers that file Form 13F holdings and combination reports (together, “Form 13F-HR”) under rule 13f-1. In some instances, two or more managers may exercise investment discretion with respect to the same securities. In these cases, subject to certain conditions, Form 13F permits one such institutional manager to report those securities on behalf of the other(s). A manager on whose behalf securities are reported, generally, must file an abbreviated “notice” report on Form 13F to identify the manager(s) reporting on its behalf (“Form 13F-NT”). *See* General Instruction 2 to Form 13F (requiring that, where two managers exercise investment discretion with respect to the same securities, only one such manager include information regarding those securities in its Form 13F report).

Figure 2 shows the significant increase in the overall size of the U.S. equities market over time and the resulting decrease in the market significance of managing \$100 million in securities as compared with the overall size of the market.



Today, 5,089 managers that exceed the \$100 million threshold file Form 13F holding reports.<sup>24</sup> This is approximately 17 times the number of filers that the threshold covered in 1975. The 1975 Amendments Senate Report anticipated that the Commission would consider the costs and burdens on smaller institutional investment managers in preparing Form 13F reports.<sup>25</sup> Given the significant increase in the number of managers required to file 13F reports over the

<sup>24</sup> See *infra* footnote 40 (noting that an additional 1,570 managers filed a notice report on Form 13F-NT for December 31, 2018).

<sup>25</sup> See 1975 Amendments Senate Report, *supra* footnote 13 (noting that the Commission represented to the Senate that, before it reduced the 13(f) reporting threshold, it would consider the cost and burden to such smaller managers of preparing such reports).

last two decades, and the substantial reduction in the significance of holdings of \$100 million, we believe it is an appropriate time to adjust the reporting threshold.

## II. DISCUSSION AND ECONOMIC ANALYSIS

### A. Increase of Form 13F Reporting Threshold

We are proposing to amend rule 13f-1 and Form 13F to raise the reporting threshold for Form 13F to \$3.5 billion.<sup>26</sup> This adjustment is based on the growth of the U.S. equities market that occurred between the adoption of section 13(f) in 1975 and December 2018, and it is designed to reflect proportionally the same market value of U.S. equities that \$100 million represented in 1975.<sup>27</sup>

We have received recommendations from persons representing a variety of different perspectives to increase the reporting threshold for Form 13F.<sup>28</sup> For example, in response to our rulemaking on shareholder reports and quarterly portfolio disclosure of mutual funds, two

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<sup>26</sup> For purposes of determining whether a manager is required to file Form 13F, the new reporting threshold would be evaluated for all months of the calendar year in which the adoption of the new reporting threshold occurs. Thus, if the Commission were to adopt an increased reporting threshold in 2020, the increased threshold would be used to determine Form 13F filing obligations for the cycle starting with the year ending December 31, 2020. The first Form 13F report that would apply the new reporting threshold would be due within 45 days after the end of such calendar year.

<sup>27</sup> Proposed rule 13f-1(a)(1); *see also* proposed General Instruction 1 of Form 13F. We calculated the growth of the U.S. equities market from 1975 until 2018 using statistical data provided by the Federal Reserve System. *See* Federal Reserve Board, Flow of Funds Chart L.223 for domestic corporate equities, *available at* <https://www.federalreserve.gov/releases/z1/current/default.htm> (“Federal Reserve Data”). The ratio of U.S. equities market value in 2018 to U.S. equities market value in 1975 is 3,571.41 percent. We multiplied that ratio by \$100 million and rounded to the nearest \$500 million, which resulted in a dollar value of \$3.5 billion. Because the proposed reporting threshold is a figure in the billions, we believe that rounding to the nearest \$500 million is appropriate.

<sup>28</sup> The Commission has also received petitions for rulemakings regarding other aspects of Form 13F. We believe that it is appropriate to propose changes to the scope of managers required to file reports on Form 13F before considering other potential amendments to the Form. *See* Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934 (Feb. 1, 2013), *available at* <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf> (requesting that the Commission amend rule 13f-1(a)(1) to shorten the 45-day delay in Form 13F’s reporting deadline); *see also* Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934 (October 7, 2015), *available at* <https://www.sec.gov/rules/petitions/2015/petn4-689.pdf> (requesting that the Commission consider requiring periodic public disclosure of short-sale activities of managers on Form 13F).

commenters in a joint letter suggested that the 13(f) reporting threshold should be raised to reflect the “effects of market inflation.”<sup>29</sup> The Commission’s Office of Inspector General recommended that the staff update its analysis of the impact of increasing the reporting threshold of \$100 million for section 13(f) in order to determine whether an increase in the threshold amount should be pursued.<sup>30</sup> Another commenter called for legislation that would increase the reporting threshold to \$450 million to reflect a consumer price index (“CPI”) adjustment from 1976 to 2019, with an adjustment every five years thereafter to reflect changes in the CPI, to ease the reporting burden on smaller investors.<sup>31</sup>

We believe that increasing the reporting threshold would provide meaningful regulatory relief for smaller managers that manage less than \$3.5 billion in 13(f) assets and would no longer have to file the form in terms of a reduction in direct compliance costs and indirect costs. We believe that some of the direct compliance costs associated with preparing filings on Form 13F have decreased since 1975, principally due to lower-cost information processing systems. However, we believe that direct compliance costs are likely to be proportionately higher for smaller managers than they are for larger managers.<sup>32</sup> For example, in connection with staff

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<sup>29</sup> See letter from Fund Democracy and Consumer Federation of America, File No. S7-51-02 (Feb. 14, 2003). The commenters noted that “[t]he \$100 million threshold was based on the impact that such a portfolio could have on the market at the time that Section 13(f) was adopted. If the same standard were applied today, the threshold would exceed \$1 billion dollars. The \$100 million threshold no longer accomplishes the stated purpose of Form 13F disclosure.”

<sup>30</sup> See OIG Report, *supra* footnote 20, at 27. The OIG Report noted that, in 2006, the staff performed an analysis of increasing the Form 13F reporting threshold to \$300 million, which reflected inflation using the consumer price index, and staff concluded that such an adjustment to the threshold would result in a significant decrease in the number of institutional investment managers that would be required to file Form 13F, with only a relatively modest decrease in the total dollar amount of assets covered.

<sup>31</sup> See National Investor Relations Institute, *The Case for 13F Reform* (Sept. 25, 2019), available at <https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI-Case-for-13F-Reform-2019-final.pdf>.

<sup>32</sup> See *infra* discussion accompanying and following footnote 43 (discussing the direct compliance costs and indirect costs associated with Form 13F); see also Section III below for a discussion of estimated information collection burdens associated with Form 13F under the Paperwork Reduction Act.

outreach to advisers to smaller fund complexes, these advisers stated that reporting on Form 13F involves significant compliance burdens. Other indirect costs also may have increased since 1975, especially for smaller managers. For example, public reports of smaller managers, as compared with larger managers, may be more likely to reflect a limited number of separately managed portfolios that follow the same style or reflect the investment behavior of a single portfolio manager.<sup>33</sup> Consequently, Form 13F data of smaller managers may be more likely to be used by other market participants to engage in behavior that is damaging to the manager and the beneficial owners of the managed portfolio, such as front running (which primarily harms the beneficial owners) or copycatting (which potentially harms the portfolio manager), which may increase the costs of investing for smaller managers and hinder their investment performance.<sup>34</sup>

Smaller managers also account for a significant proportion of the Form 13F CTRs filed with the Commission. Managers with less than \$3.5 billion of 13(f) securities manage 9.2 percent of the dollar value of all reported securities, yet our staff estimates that those smaller managers submit approximately three-fourths of all the Form 13F CTRs filed (see Table 1). Additionally, smaller managers may have limited resources, which might make it difficult for them to file Form 13F CTRs in order to protect their holdings information from harmful behaviors and the costs of those behaviors.

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<sup>33</sup> See Marshall E. Blume and Donald B. Keim, *The Changing Nature of Institutional Stock Investing*, 6 CRITICAL FIN. REV. 1 (2017) (“Blume and Keim”) at 3-4.

<sup>34</sup> See e.g., Susan E.K. Christoffersen, Erfan Danesh, and David Musto, *Why Do Institutions Delay Their Shareholdings? Evidence from Form 13F*, (Working Paper, June 11, 2018) (“Christoffersen, Danesh and Musto”), available at [https://www.bwl.uni-mannheim.de/media/Lehrstuehle/bwl/Area\\_Finance/Finance\\_Area\\_Seminar/HWS2018/Christoffersen\\_Paper.pdf](https://www.bwl.uni-mannheim.de/media/Lehrstuehle/bwl/Area_Finance/Finance_Area_Seminar/HWS2018/Christoffersen_Paper.pdf) (explaining that a frontrunner is one who trades “in front of an expected trade by another investor, thereby making the same trade on the terms the other investor would otherwise have got.”); see also Mary Margaret Frank, et al., *Copycat Funds: Information Disclosure Regulation and the Returns to Active Management in the Mutual Fund Industry*, 47 J. L. & ECON. 515 (2004) (“Frank et al. 2004”) (explaining that copycat funds “purchase the same assets as actively-managed funds as soon as those asset holdings are disclosed.”).

Our staff regularly receives inquiries and requests for assistance from managers regarding compliance with the Form 13F reporting obligations. Smaller managers make many of the requests. In addition to relieving smaller managers from the compliance burdens associated with filing Form 13F (and Form 13F CTRs), our proposal would also reduce the costs to the Commission associated with administering the regulatory program for Form 13F by reducing the number of inquiries and requests for assistance the staff receives and the associated time needed for staff review.

We considered various approaches to adjusting the reporting threshold, including the use of:

- Stock Market Growth: Using the growth in value of U.S. public corporate equities from 1975 until 2018 as the basis for calculating the threshold increase, the threshold would be \$3.57 billion.<sup>35</sup>
- Consumer Price Inflation: We evaluated two potential consumer price inflation calculations:
  - Using the Personal Consumption Expenditures Price Index (“PCE”) inflation standard through 2018, the threshold would be \$358 million.<sup>36</sup>
  - Using the CPI inflation standard through 2018, the threshold would be \$453 million.<sup>37</sup>

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<sup>35</sup> Based on the Federal Reserve Data, *supra* footnote 27.

<sup>36</sup> Based on the Personal Consumption Expenditures Chain-Type Price Index, published by the U.S. Department of Commerce.

<sup>37</sup> Based on the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics

- Stock Market Returns: Using the total return of the stock market from the end of December 1975 to the end of December 2018 as the basis for calculating the threshold increase, the threshold would be \$9.33 billion.<sup>38</sup>

Table 1 demonstrates how changing the reporting threshold for section 13(f) would affect the number of filers at different threshold amounts and the aggregate holdings reported by such filers.<sup>39</sup>

**Table 1: Form 13F Reporting Threshold Changes**

13F Holdings Filings as of December 31, 2018<sup>40</sup>

Total Number of Holdings Filers: 5,089  
Total Reported Assets (billions): \$25,198

<b>Threshold</b>	<b>Number of Filers Above Threshold</b>	<b>Number of Filers Below Threshold</b>	<b>Percent of Filers Below Threshold</b>	<b>Aggregate Assets of Filers Above Threshold (billions)</b>	<b>Percent of the Dollar Value of All Reported Assets</b>

of the U.S. Department of Labor.

<sup>38</sup> We assembled monthly value-weighted market returns with dividends reinvested from the Center for Research in Security Prices. We compounded these returns from January 1976 to December 2018, and we multiplied that product by \$0.100 billion, which resulted in \$9.33 billion.

<sup>39</sup> The staff compiled this data by reviewing filings made on Form 13F during the relevant period. The data excludes securities reported as options on Form 13F. The staff has adjusted the reported data to account for what appeared to be erroneously reported information, such as data that is reported in the wrong units.

<sup>40</sup> This data covers Form 13F-HR, but excludes Form 13F-NT. An additional 1,570 managers filed a Form 13F-NT for December 31, 2018. Using this data, we cannot determine precisely how many of these additional 1,570 managers would no longer need to file Form 13F-NT if the reporting threshold is increased. Therefore, if a Form 13F-NT filer is linked to a Form 13-HR filing of a manager that exceeds the 3.5 billion threshold, we assumed that such a manager would be required to file Form 13F-NT if the reporting threshold is increased as proposed. Therefore, we estimate that 738 notice reports would be filed on Form 13F-NT if the proposed threshold increase is adopted.

Certain aspects of the Form 13F reporting structure make it difficult to pinpoint the exact value of reported holdings for an individual manager. The staff analysis excludes holdings reported as options. In addition, not all holdings may be reported due to Form 13F CTRs and managers may omit a holding if they hold fewer than 10,000 shares and less than \$200,000 in aggregate fair market value. Therefore, the actual number of Form 13F filers above the threshold, the aggregate assets of filers above the threshold, and the percentage of all assets may be higher.



≥ \$100 billion	37	5,052	99.3%	\$14,286	56.7%
≥ \$30 billion	114	4,975	97.8%	\$18,605	73.8%
≥ \$25 billion	122	4,967	97.6%	\$18,824	74.7%
≥ \$10 billion	278	4,811	94.5%	\$21,261	84.4%
≥ \$5 billion	441	4,648	91.3%	\$22,427	89.0%
≥ \$4.5 billion	467	4,622	90.8%	\$22,550	89.5%
≥ \$4 billion	500	4,589	90.2%	\$22,688	90.0%
≥ \$3.5 billion	550	4,539	89.2%	\$22,876	90.8%
≥ \$3 billion	597	4,492	88.3%	\$23,027	91.4%
≥ \$2.5 billion	672	4,417	86.8%	\$23,233	92.2%
≥ \$2 billion	790	4,299	84.5%	\$23,494	93.2%
≥ \$1.5 billion	955	4,134	81.2%	\$23,780	94.4%
≥ \$1 billion	1,227	3,862	75.9%	\$24,113	95.7%
≥ \$900 million	1,301	3,788	74.4%	\$24,183	96.0%
≥ \$800 million	1,407	3,682	72.4%	\$24,273	96.3%
≥ \$700 million	1,532	3,557	69.9%	\$24,366	96.7%
≥ \$600 million	1,710	3,379	66.4%	\$24,481	97.2%
≥ \$500 million	1,904	3,185	62.6%	\$24,588	97.6%
≥ \$400 million	2,188	2,901	57.0%	\$24,716	98.1%
≥ \$300 million	2,543	2,546	50.0%	\$24,838	98.6%
≥ \$200 million	3,148	1,941	38.1%	\$24,985	99.2%
≥ \$100 million	5,089	0	0.0%	\$25,198	100.0%

We considered raising the threshold to account for consumer price inflation, rather than market growth. However, we preliminarily determined that the group of managers covered by using a market growth standard better reflects the group of managers intended to be subject to reporting under section 13(f) because this approach focuses on managers whose holdings of section 13(f) securities are large relative to the overall size of the U.S. equities market.<sup>41</sup> Raising the reporting threshold for rule 13f-1 to \$3.5 billion, which would account for the growth in the U.S. equities market since 1975, would retain disclosure of 90.8 percent of the dollar value of the

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<sup>41</sup> See *supra* footnote 22 and accompanying text (noting that the 1975 Amendments Senate Report stated that the Form 13F reporting threshold was designed to limit the form’s filing obligations to “the largest institutional investment managers”).

Form 13F holdings data currently reported while relieving the reporting burdens from approximately 4,500 Form 13F filers, or approximately 89.2 percent of all current filers.<sup>42</sup>

Managers incur direct compliance costs, including information collection costs,<sup>43</sup> associated with Form 13F. These costs include the following: (1) developing and maintaining internal hardware and software systems to collect and analyze the information for submission;<sup>44</sup> (2) utilizing internal and external legal and compliance resources for advice and review in connection with Form 13F filings and to analyze whether any holdings qualify for confidential treatment and, if so, to prepare and submit a request for confidential treatment; (3) preparing the information for submission to the EDGAR system; and (4) undertaking other reviews or compliance activities as part of the manager's overall compliance program, such as comparisons of the data reported on Form 13F against other regulatory filings that may have similar data reporting obligations to confirm that information is reported consistently across multiple regulatory filings, as applicable.

Based on staff analysis and outreach to managers, we estimate that, for the smaller managers that would no longer file reports on Form 13F under the proposal, these direct compliance costs could range from \$15,000 to \$30,000 annually per manager, depending on the complexity and volume of holdings, the type of third-party legal and compliance review undertaken prior to the filing, and a filer's experience with filing Form 13F, among other factors.

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<sup>42</sup> Since December 31, 2018, there have been significant fluctuations in the market that may impact our analysis.

<sup>43</sup> See Section III below for a discussion of estimated information collection costs associated with Form 13F under the Paperwork Reduction Act.

<sup>44</sup> We believe that funds generally do not maintain dedicated hardware systems for the sole purpose of filing Form 13F. Our cost estimates therefore are intended to take into account only the partial cost of those systems attributable to filing Form 13F.

Therefore, we estimate that the direct compliance cost savings for these managers per year would range from \$68.1 million to \$136 million.<sup>45</sup> We believe that larger managers that would continue to be required to file reports on Form 13F under the proposal incur higher direct compliance costs, on a per manager basis, than the smaller managers.

In addition to these direct compliance costs, managers face indirect costs such as the potential for front-running and copycatting. The key determinant of these indirect costs is whether the disclosure of holdings information enables other market participants to take actions that harm either the beneficial owners of the fund or its manager.

The academic literature provides partial evidence about the harm caused by the actions of third parties that is applicable in the context of the proposed amendments. For example, several studies show that managers use confidential treatment requests to delay reporting stocks on Form 13F that have higher future returns than their other stocks, but these studies do not directly verify that the delayed stocks do not continue to have high future returns after the end of the confidential treatment period.<sup>46</sup> Other researchers show that managers who are more likely to face front-running costs choose to file at the end of the 45-day filing window, but they do not show whether or to what extent the delay to the end of the filing window eliminates the potential front-running costs.<sup>47</sup> Many studies test for copycatting profits by simulating funds that copy

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<sup>45</sup> These estimates are based on the following calculations: 4,539 filers x \$ 15,000 = \$ 68,085,000; 4,539 filers x \$30,000 = \$136,170,000. This is based on our estimate that 4,539 managers would no longer be required to file reports on Form 13F-HR under the proposal. These estimates do not include direct compliance costs for managers filing notice reports on Form 13F-NT. The information collection burdens associated with these filings are included in the estimates discussed below in Section III.

<sup>46</sup> See George O. Aragon, Michael Herzel, and Zhen Shi, *Why Do Hedge Funds Avoid Disclosure? Evidence from Confidential 13F Filings*, 48 J. FIN. & QUANTITATIVE ANALYSIS, 1499 (Oct. 2013); see also Agarwal Vikas, Wei Jiang, Yuehua Tang, and Baozhong Yang, *Uncovering Hedge Fund Skill from the Portfolio Holdings They Hide*, 68 J. FIN. 739 (2013).

<sup>47</sup> See Chistoffersen, Danesh and Musto, *supra* footnote 34 at 23.

reported 13F portfolios, and the studies generally find that some copycat funds can match the performance of the copied funds, although they do not directly test whether this behavior harms managers or beneficial owners of the copied funds.<sup>48</sup> In addition, one study examines hedge funds around the time they begin filing Form 13F. The study suggests that hedge funds experience decreased performance after Form 13F disclosure, and it reports that this drop in performance may be “due to the revelation of trade secrets and free-riding activities.”<sup>49</sup>

Under the proposed amendments, the aggregate value of section 13(f) securities reported by managers would represent approximately 75 percent of the U.S. equities market as a whole, as compared with 83 percent without the proposed amendments and 40 percent in 1981, the earliest year for which Form 13F data is available.<sup>50</sup> The proposed amendments to the Form 13F reporting threshold thus also reflect the changes in the structure of the market that have occurred over time.

Using CPI or PCE would result in a reporting threshold of \$500 million and \$400 million, respectively (applying a rounding convention to the nearest \$100 million). The decrease in the dollar value of the reported holdings would be either about 2.4 percent or 1.9 percent, and the decrease in the number of current filers would be about 3,200 or 2,900, respectively. In the years since 1975, the overall size of the U.S. equities market has grown at a rate significantly higher

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<sup>48</sup> See Frank et al. 2004, *supra* note 34; see also Marno Verbeek and Yu Wangb, *Better than the Original? The Relative Success of Copycat Funds*, 37 J. BANKING & FIN. 3454 (2013); see also Chistoffersen, Danesh and Musto, *supra* footnote 34.

<sup>49</sup> See Shi, Zhen, *The Impact of Portfolio Disclosure on Hedge Fund Performance* (2017) the Journal of Financial Economics, Vol. 126, at 38 (“Shi (2017)”) (finding (a) an annual reduction of certain hedge funds’ performance after they begin filing Form 13F, (b) that “the return correlations between disclosing funds and other hedge funds that are in the same investment style increase after the disclosure,” and (c) that “the negative effect of disclosure is concentrated among funds that hold more illiquid stocks, have lower turnover rates, have greater portfolio concentration, are in more competitive investment styles, have performed well in the past, employ less conventional trading strategies, or belong to an asset management company with a smaller number of funds”).

<sup>50</sup> This data is based on the staff’s review of data reporting on Form 13F and Federal Reserve Data.

than the CPI or PCE. The legislative history indicates that the reporting threshold of section 13(f) was designed to focus on larger managers. We therefore believe that relying on a consumer price inflation measure such as CPI or PCE to account for 45 years of market growth would not adequately or appropriately capture the holdings and universe of managers contemplated by section 13(f).

Using stock market returns from December 1975 to December 2018, rather than market growth, would result in a reporting threshold of \$9.5 billion, rounded to the nearest \$500 million. The decrease in the dollar value of the reported holdings would be about 15.2 percent and the decrease in the number of current filers would be about 4,800. We believe that section 13(f) was intended to provide transparency into a certain segment of the securities markets—the equity holdings by larger institutional investment managers. Therefore, we believe that it is more appropriate to increase the reporting threshold based on the growth of the U.S. equities market rather than the returns generated by the stock market. Our preliminary decision to use market growth to adjust the reporting threshold is designed to require managers to file on Form 13F when their holdings of section 13(f) securities approximate the same percentage of the U.S. equities market that was represented by the \$100 million threshold in 1975. If we were to use stock market returns instead, however, the holdings of individual managers required to report under this threshold would not approximate the same percentage of the U.S. equities market that was represented by the \$100 million threshold in 1975.

We have considered the potential effects of the reduction in Form 13F data received from smaller managers, and we understand that the information reported on Form 13F currently is used for a wide variety of purposes. Since Form 13F data became publicly available, different uses for the data have developed. These uses developed, in part, due to the increased volume of

Form 13F data as more and more managers became subject to the filing requirement. While Form 13F was originally designed to assist regulators and the public in understanding the effects of institutional equity ownership on the markets, the pool of users of the data has expanded to include academics, market researchers, the media, attorneys pursuing private securities class-action matters, and market participants (including institutional investors themselves) who use the data to enhance their ability to compete.<sup>51</sup> The data can also assist individuals in making investment decisions, investment managers in managing assets, and corporate issuers of 13(f) securities interested in determining the beneficial holders of their publicly traded stock.<sup>52</sup> Commission staff also uses Form 13F information for a variety of purposes, some of which were specifically identified in the legislative history of section 13(f), while others were not. Since section 13(f) was adopted in 1975, data available to the Commission about the investment activities of institutional investment managers has been greatly expanded and includes data from sources other than Form 13F, such as Form N-PORT. Commission staff currently uses Form 13F and other data regarding the investment activities of institutional investment managers in rulemakings, to support the Commission's examination and enforcement programs, and to conduct research. For example, Commission staff may use investor information from Form 13F on a relatively infrequent basis in estimating shareholder harm as well as shareholder turnover,

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<sup>51</sup> Commission staff has noted that "meritorious private actions have long been recognized as an important supplement to civil and criminal law-enforcement actions." See *Study on the Cross-Border Scope of the Private Right of Action under Section 10(b) of the Securities Exchange Act of 1934*, available at <https://www.sec.gov/news/studies/2012/929y-study-cross-border-private-rights.pdf>. Some of those private actions use Form 13F data in their calculations to produce a more reliable, 'lower bound' estimate of damages. See Marcia Mayer, *Best-Fit Estimation Of Damaged Volume in Shareholder Class Actions: The Multi-Sector, Multi-Trader Model of Investor Behavior*, Nat'l Economic Research Assoc. (Oct. 2006); Daniel Fishel et al., *The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: An Update*, 10(3) BRIEFLY (WASHINGTON, D.C.) 1 (2006). As a result, a reduction in publicly available Form 13F data may result in increased use of other methods to estimate shareholder harm.

<sup>52</sup> See generally Edward Pekarek, *Hogging the Hedge? "Bulldog's" 13F Theory May Not be So Lucky*, 12 FORDHAM J. CORP. & FIN. LAW 1079 (2007) ("Pekarek").

which may be considered in the context of potential corporate penalties, including in determining whether proposed penalties would cause further harm to shareholders who suffered losses as a result of the violation. Commission staff typically will have access to additional data sources for these estimates, including Form N-PORT, and the Commission generally does not expect the proposed amendments to the Form 13F reporting thresholds to impact the staff's recommendations regarding the imposition or amounts of corporate penalties.

We recognize that raising the Form 13F reporting threshold would decrease holdings data available to the Commission and other regulators as well as corporate issuers, market participants, and other analysts and researchers pursuant to section 13(f).<sup>53</sup> Although we believe the proposal would retain disclosure of 90.8 percent of the dollar value of the Form 13F holdings data, some of the holdings data that would no longer be reported by managers with less than \$3.5 billion in section 13(f) securities relates to smaller portfolio companies in which some commenters assert larger managers may be less likely to invest.<sup>54</sup> We estimate that, under the proposal, holdings data for approximately 95.7 percent of portfolio companies that are currently reported by more than one manager on Form 13F would continue to be reported on the form.<sup>55</sup> Whether any of these Form 13F data users find the data from smaller managers to be valuable

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<sup>53</sup> See *infra* footnote 58 and accompanying text.

<sup>54</sup> See *e.g.*, Blume and Keim *supra* footnote 33 at 16 (providing evidence that portfolios of smaller institutional investors are weighted more heavily towards smaller stocks compared to portfolios of larger institutional investors, but noting that both large and small institutional investors overweight investments in smaller stocks relative to market weights).

<sup>55</sup> We believe that data regarding portfolio companies held by just a single manager would generally be of limited value to many users of Form 13F data. This is because a smaller sample size provides less information about the population and, in particular, a sample size of one provides no basis for an estimate of variance. However, if we also counted portfolio companies that are currently held by just a single manager on Form 13F, together with portfolio companies that are currently held by more than one manager, we estimate that, under the proposal, holdings data for approximately 87.2 percent of portfolio companies would continue to be reported.

would depend on their particular use of this data.<sup>56</sup> We believe that the investing public specifically would be less concerned about the availability of portfolio holdings of these smaller managers because the activities of these smaller managers are not likely to cause market effects of the type contemplated by section 13(f).<sup>57</sup>

When examining the effects on data availability of the proposed amounts, we are mindful of alternative sources of holdings data that either exist or are being developed and may provide overlapping or similar data to that included on Form 13F. For example, since the adoption of section 13(f), the Commission has adopted additional rules and forms that require investment companies to provide additional holdings data to the Commission, which would provide the Commission and the public with certain information about these funds' holdings of section 13(f) securities and other investments.<sup>58</sup> As another example, the Commission adopted a rule to require the self-regulatory organizations to submit to the Commission a national market system plan to create, implement and maintain a comprehensive consolidated audit trail that would allow

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<sup>56</sup> See *e.g.*, Blume and Keim, *supra* footnote 33 (observing that, because the \$100 million reporting threshold has not changed over several decades, whereas stock market capitalization has increased significantly, the holdings of smaller managers make up only 6.1 percent of the aggregate institutional portfolio in 2010 and do not affect the main results of their analysis about the trends of institutional ownership).

<sup>57</sup> In addition, to the extent that a manager (individually or collectively with other members of a group) acquires more than 5 percent of any voting class of a company's equity securities registered under section 12 of the Exchange Act, the manager would be required to report such an acquisition, along with other information, on Schedule 13D within 10 days of the purchase. Depending on the circumstances, the manager may be eligible to file the more abbreviated Schedule 13G in lieu of filing Schedule 13D.

<sup>58</sup> See *e.g.*, Form N-PORT [referenced in 17 CFR 274.150] (This form requires each registered management investment company to report on a quarterly basis its monthly holdings information to the Commission. On a quarterly basis, and with a 60-day delay, holdings information for the last month of the quarter is made publicly available). Additionally, developments in the market such as the increased use of technology to capture current data with respect to market activity, including more sophisticated systems for following daily transactions, have reduced the need for the Commission to rely on Form 13F for purposes of market analysis or surveillance.



regulators to track all activity throughout the U.S. markets in National Market System securities efficiently and accurately.<sup>59</sup>

The 1975 Amendments Senate Report noted that Congress was concerned with the material increase in the concentration of institutional ownership of securities with managers and the effect of such an increase on the trade prices of those securities, the issuers of the securities, as well as on the interests of individual investors.<sup>60</sup> Congress adopted section 13(f), in part, because it was concerned that this increase in concentration, coupled with the lack of trading data of larger managers available to regulators and the market, hampered the Commission's ability to maintain fair and orderly securities markets and impaired the stability of stock prices.<sup>61</sup> We believe that it is necessary to continue to provide regulators and the public information regarding the equities holdings of larger managers that have the potential to significantly affect the securities markets. The need for public disclosure of holdings of smaller managers is less compelling. Raising the reporting threshold to \$3.5 billion is designed to recalibrate the reporting threshold to reflect the multiple objectives of section 13(f). These include providing the Commission, other regulators and the public with holdings information of larger managers that may impact the markets without requiring smaller managers to incur the costs associated with filing reports on Form 13F and subjecting them to the risks of potentially harmful investment behaviors resulting from those filing obligations. We believe that the proposed \$3.5 billion reporting threshold recalibrates the reporting threshold appropriately so that it does not impose undue burdens, including because the dollar value of the aggregate holdings of the smaller

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<sup>59</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), [77 FR 45722 (August 1, 2012)].

<sup>60</sup> See 1975 Amendments Senate Report, *supra* footnote 13 at 82.

<sup>61</sup> *Id.*

managers that would no longer be required to file reports on Form 13F under the proposal represent a small percentage of 13(f) securities overall.

We request comment on the proposed amendments to rule 13f-1 and Form 13F to adjust the reporting threshold.

1. Should we, as proposed, adopt an amendment to rule 13f-1 that would initially adjust the reporting threshold under rule 13f-1? Is the proposed threshold of \$3.5 billion appropriate? If another threshold would be more appropriate, what should the threshold be and why?
2. Would raising the reporting threshold for Form 13F to \$3.5 billion negatively affect the utility of Form 13(f) data or investor confidence in the integrity of the U.S. markets? If so, how? And if so, is there a different threshold that would be more appropriate? Are there any additional effects of raising the Form 13F reporting threshold that we have not considered?
3. Should we, as proposed, adopt an amendment to rule 13f-1 that would initially adjust the Form 13F reporting threshold based on the growth in the U.S. equities market? Should we, as described above, use the Federal Reserve Board's flow of funds data on corporate equities as a basis for this calculation?
4. Rather than adjusting the Form 13F reporting threshold based on the growth in the U.S. equities market that occurred between 1975 and December 2018 (a date certain), should we instead use an average rate of growth, which might effectively reflect market growth while minimizing the effects of market fluctuations around the time the Commission is adjusting the threshold? For example, under this approach, we could take the market size as of the end of 2015, 2016, 2017, 2018, and 2019, average

- those values, and compare that average to the size of the U.S. equities market in 1975. If so, why? Is such a five-year period (or other period) more appropriate for calculating an average growth rate to apply over the 45 years since the threshold was initially set?
5. Should we instead adjust the reporting threshold for Form 13F using stock market returns as a basis for this calculation? If so, how should we measure stock market returns? For example, would dividends be included or excluded? Is there another measure that we should use as a basis for initially adjusting the reporting threshold?
  6. Should we instead adjust the reporting threshold for Form 13F to account for consumer price inflation? If so, what measure of consumer price inflation—PCE or CPI—should we use? Is there another measure of consumer price inflation (or other inflation measure) that we should use? If so, what?
  7. Should we adopt a different rounding convention, rather than the nearest \$500 million, such as the nearest \$1 billion, \$250 million, or \$100 million? For example, if we rounded to the nearest \$100 million, the reporting threshold would be \$3.6 billion based on stock market growth. If we should use a different rounding convention, why?
  8. Are the Form 13F filing obligations burdensome to smaller managers? If so, how? Are they burdensome in absolute terms, relative terms, or both? Are the burdens on smaller managers different in character from the burdens on larger managers?
  9. What, if any, are the benefits to investors and markets for the markets to have access to Form 13F data from smaller managers? Do these benefits justify the filing burdens? If so, why?

10. Are the Form 13F filing obligations burdensome to larger managers? If so, how? Is it beneficial to the markets to continue to have access to Form 13F data from larger managers? If so, why? Do these benefits justify the filing burdens? If so, why?
11. Who uses Form 13F data? Are these uses beneficial to investors, market integrity, or capital formation? Why or why not? How will these users of the data be affected if the reporting threshold is increased and fewer filers report? Do those users prefer a different threshold? Why or why not? Can those users reasonably find alternative sources of data that meet their needs? Why or why not?
12. We estimate above direct compliance costs that smaller managers incur in connection with Form 13F. Are these estimates accurate? What kinds of costs, and in what amounts, do smaller managers incur in connection with Form 13F? How do the costs differ for larger and smaller managers? How much internal time do managers devote to compliance with Form 13F? What are the external costs, such as the cost of a third-party vendor or external legal counsel, associated with complying with Form 13F? We request comment on the direct compliance costs managers experience in connection with Form 13F, including the estimates in Section III below, and how these costs vary among managers.
13. We also request comment on indirect costs that may be incurred in connection with Form 13F. We discuss above some of these indirect costs, such as the potential for front-running and copycatting. Do commenters agree that these indirect costs are incurred? How do these indirect costs differ for larger and smaller managers? Are there other or different indirect costs that are incurred in connection with Form 13F? What are those and how would they be affected by the proposed amendments?

## **B. Future Analysis**

We are proposing an increase in the reporting threshold of Form 13F to account for the change in size and structure of the U.S. equities market since 1975. However, we recognize that, as the U.S. equities market continues to change in the future, Form 13F's reporting threshold, once again, may become significantly misaligned with the size and structure of the market and, as a result, place unnecessary reporting burdens on certain managers. Therefore, the staff will conduct reviews of the Form 13F reporting threshold every five years to determine whether the reporting threshold continues to be appropriate. If, as a result of such a review, the staff believes that additional adjustments should be made to the Form 13F reporting threshold, the staff will recommend an appropriate adjustment to the Commission.

As an alternative, we considered proposing to amend rule 13f-1 to provide that the Commission would make automatic future adjustments to the Form 13F reporting threshold on an ongoing basis every five years to keep the reporting threshold aligned with the size and structure of the market.<sup>62</sup> For example, we considered proposing that these automatic adjustments take into account the growth in the U.S. equities market. However, we are concerned that adjusting the Form 13F reporting threshold to account for the growth in U.S. equities market for regularly recurring, automatic, and ongoing adjustments could cause volatile changes in the reporting threshold. Alternatively, we considered using inflation indexes, such as the PCE or CPI, to make automatic adjustments to the Form 13F reporting threshold. While these measures would result in less volatile changes to the 13F reporting threshold, we are concerned that the

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<sup>62</sup> Such a requirement would be similar to other automatic periodic adjustments that the Commission makes. For example, rule 205-3 under the Investment Advisers Act of 1940 ("Advisers Act") [17 CFR 275.205-3] provides that the Commission will issue an order every five years to adjust the dollar amounts in that rule for the effects of inflation.

growth in the size of the market may outpace inflation over time. This would cause the 13F reporting threshold to burden smaller managers unnecessarily.

Based on these considerations, we determined not to propose automatic future adjustments to the reporting threshold. The staff's periodic review of the Form 13F reporting threshold and any resulting staff recommendation would inform the Commission's consideration of whether to propose additional changes to the threshold in the future. Addressing any future change to the reporting threshold in notice and comment rulemaking, as opposed to an automatic adjustment required by an order, would allow the Commission to actively consider and receive public comment on the effects of any future adjustments to the reporting threshold, including the effects on the mix of information available to the market and the reporting burdens associated with filing Form 13F reports. We request comment on the following:

14. Rather than the staff conducting periodic reviews of the Form 13F reporting threshold, should we instead adopt a periodic automatic adjustment to the Form 13F reporting threshold? If so, how often should the reporting threshold be automatically adjusted? If we adopt an automatic adjustment, what measure should we use to make the adjustment? Should we use consumer price inflation measures such as the CPI or PCE? Should we use stock market growth or stock market returns instead? Is there a different measure that would be more appropriate? If so, please explain why. If we use any of these measures, how should they be measured and as of what date? If we use an adjustment based on stock market growth or returns, the adjustment could be positive or negative compared with the present level. Would such an automatic adjustment raise any additional issues that the Commission should take into account in considering such an automatic adjustment?

### C. Omission Threshold for Form 13F

Form 13F allows, but does not require, a manager to omit holdings of fewer than 10,000 shares (or less than \$200,000 principal amount of convertible debt securities) (“share limit”) and less than \$200,000 aggregate fair market value (“value limit”) (together, with the share limit, “omission threshold”).<sup>63</sup> The omission threshold was intended to further the Commission’s goals of structuring Form 13F in a manner that would provide meaningful holdings data while minimizing the form’s reporting burdens.<sup>64</sup> The Commission included the omission threshold when it first adopted Form 13F because it viewed aggregate holdings in these amounts as *de minimis* and, therefore, unlikely to have the potential to materially impact the market.<sup>65</sup>

In conjunction with the proposal to increase the reporting threshold, we are proposing to eliminate the omission threshold for Form 13F. We believe that, if the reporting threshold is substantially increased, the omission threshold would no longer be necessary or appropriate. We have proposed a significant increase in the reporting threshold for Form 13F to \$3.5 billion and, as a result, reporting all of a manager’s holdings would be less burdensome to managers of that size. For these larger managers, we believe that the incremental increase in cost, if any, of including securities holdings information below the omission threshold on Form 13F would be immaterial, including because larger managers are more likely to have trading and other systems that can export all of the manager’s positions (regardless of size) for purposes of reporting on Form 13F. Eliminating the omission threshold therefore may not materially increase burdens for these filers. Although we do not have data on the extent to which managers currently utilize the

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<sup>63</sup> See Special Instruction 10 of Form 13F.

<sup>64</sup> See *supra* footnote 17 and accompanying text.

<sup>65</sup> See 13F Adopting Release, *supra* footnote 10 at n.12 and accompanying text.

omission threshold, our staff has examined current filings on Form 13F by managers reporting more than \$3.5 billion in holdings and found that a number of these managers currently report holdings that fall below the omission threshold.<sup>66</sup> These managers choose not to omit certain holdings even where Form 13F would permit them to do so. Should a manager determine that disclosure of a smaller holding may cause harm and qualify for confidential treatment, we believe that managers with at least \$3.5 billion under management would be able to seek appropriate protection by filing Form 13F CTR.

Rather than eliminate the omission threshold entirely, as proposed, we considered adjusting it, including adjusting it upwards to account for market growth, akin to the adjustment we are proposing to the reporting threshold (*e.g.*, increasing the share limit to 50,000 and the value limit to \$1,000,000<sup>67</sup>). We are not taking this or a similar approach because, as discussed, we believe that the incremental increase in cost, if any, of including securities holdings information below the current omission threshold—or any revised threshold—is likely immaterial.

We seek comment on our proposal to eliminate the omission threshold, including the following issues:

15. Should we, as proposed, eliminate the omission threshold? Why or why not?
16. If the Form 13F reporting threshold is raised to \$3.5 billion as proposed, to the extent it is not already reported on a voluntary basis, would investors and the markets find

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<sup>66</sup> In December 2018, we estimate that 1,162 managers, or 23.1 percent, voluntarily reported at least some positions that fell within the omission threshold. Additionally, approximately 212 managers (or 38.27 percent) who had at least \$3.5 billion in assets under management voluntarily reported positions that fell below the omission threshold.

<sup>67</sup> Based on the staff's review of data reported on Form 13F, increasing the share and value limits in this way would result in 25.83 percent of the number of holdings qualifying for omission on Form 13F and a decrease in the value of the reported securities of 0.22 percent.



- the disclosure of smaller holdings information for larger managers valuable? Why or why not?
17. Among Form 13F filers with at least \$3.5 billion of 13(f) securities under management, is it costly to report small positions? Why or why not? How many of these filers' positions have fewer than 10,000 shares? How many of their positions are valued under \$200,000? What is the incremental cost of reporting these small positions on Form 13F? Is the incremental cost significant? Are there other costs associated with identifying these specific positions for purposes of excluding them? Are there other reasons that it would be beneficial to keep the omission threshold?
  18. Rather than eliminating the omission threshold, should we increase it? If so, what part should we increase? Should we adjust only the share limit of the omission threshold? If so, to what? Should we adjust only the value limit of the omission threshold? If so, to what? Should we adjust both components of the omission threshold? If so, to what? Should we, for example, increase the share limit to 50,000 and the value limit to \$1,000,000?
  19. Should we mirror the adjustment to the omission threshold proportionately to the adjustment we are proposing for the Form 13F reporting threshold using stock market growth? Would such an adjustment result in a significant decrease in securities reported on Form 13F? Would such an adjustment impede the ability of the public to observe the impact managers have on the markets?
  20. If we maintain an omission threshold, should we adopt a mechanism for automatic future adjustments of the omission threshold? Should future adjustments be for the

share limit, for the value limit, or for both? What is an appropriate mechanism for adjusting the share limit?

#### **D. Additional Identifying Information**

We are proposing to amend Form 13F to require filers to provide additional identifying information. The proposed amendments would require each Form 13F filer to provide its CRD number and SEC filing number, if any.<sup>68</sup> If a manager is making a Form 13F-NT filing, the manager must include the CRD number and SEC filing number, if any, of any other manager included in the “List of Other Managers Reporting for this Manager” table on the cover page.<sup>69</sup>

We believe that this information would allow the Commission and other consumers of Form 13F data to identify a Form 13F filer’s other regulatory filings and the interrelationships between managers who share investment discretion over 13(f) securities more easily. This could identify for the public additional sources of market information.<sup>70</sup> We estimate that each manager will initially spend six hours per year implementing these changes.<sup>71</sup> Therefore, we estimate that these amendments will initially impose \$1,164,798 of costs on all managers who would be required to file Form 13F under the proposed reporting threshold.<sup>72</sup> We believe that the

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<sup>68</sup> See proposed amendments to Special Instruction 5 of Form 13F.

<sup>69</sup> A manager can make a Form 13F-NT filing if all the securities for which the manager has investment discretion are reported by another manager. See Special Instruction 6 of Form 13F. Similarly, if a manager’s Form 13F-HR reports the holdings of managers other than the reporting manager, the reporting manager would be required to include the CRD number and SEC filing number of those other managers in the “List of Other Included Managers” on the cover page. See Special Instruction 8 of Form 13F.

<sup>70</sup> See section 13(f)(4) of the Exchange Act [15 U.S.C. 78m(f)(4)] (requiring the Commission to tabulate information contained in Form 13F reports in a manner that would “maximize the usefulness of the information to other Federal and State authorities and the public”). The ability to identify interrelationships between managers easily could also allow third party vendors that compile Form 13F data to provide more complete trading information. See Pekarek, *supra* footnote 52, at n.91 (noting that most academic studies rely on 13F filings compiled quarterly by third party vendors).

<sup>71</sup> See Section III below for a discussion of estimated burdens associated with Form 13F under the Paperwork Reduction Act.

<sup>72</sup> *Id.*

estimated additional costs of requiring this disclosure would be justified by informational efficiencies and benefits.<sup>73</sup>

We seek comment on the following issues:

21. Should we require managers to provide their CRD number and SEC filing number, if any, on Form 13F?
22. Should we require managers to provide the CRD number and SEC filing number, if any, of other managers identified in their 13F report?
23. Would this additional identifying on Form 13F be useful information? If so, how?
24. Would disclosing this information be unduly burdensome for 13F filers?
25. Are there any other amendments we should make to the information provided on Form 13F? For example, is there any information currently required that is not useful or does not have a beneficial effect for investors, reporting managers, or users of the data? Should we consider omitting Form 13F's requirement to provide a CUSIP number for each security? Why or why not? Should we permit managers to provide, in lieu of a CUSIP number, other identifiers such as a Financial Instrument Global Identifier (FIGI) for each security? Why or why not? Would permitting voluntary use of an alternate identifier have a beneficial effect for investors, reporting managers, or users of the data?

#### **E. Technical Amendments**

We are proposing to make certain nonsubstantive technical amendments to Form 13F designed to account for the previous change in the format of Form 13F from the plain-text ASCII

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<sup>73</sup> Other regulatory filings also require similar identifying information. *See e.g.*, Form N-CEN [referenced in 17 CFR 274.101]; Form ADV [referenced in 17 CFR 279.1].

format to the structured XML data format. For example, we are proposing to simplify the rounding conventions of Form 13F by requiring all dollar values listed on Form 13F to be rounded to the nearest dollar, rather than to the nearest one thousand dollars as is currently required.<sup>74</sup> We are also proposing to remove the requirement that filers, when reporting dollar values on Form 13F, omit the “000”.<sup>75</sup> As a space saving measure, current Form 13F instructs filers to omit the “000” and thus, for example, report a security with a value of \$5 million as \$5,000. As proposed, such a filer would report the security’s value as \$5,000,000. Since column width is no longer an issue with the structured XML data format, we believe that this change will reduce filer mistakes and data inaccuracies.<sup>76</sup> For similar reasons, we also are proposing to 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.<sup>77</sup> We believe that these amendments would enhance the accuracy of the data provided on Form 13F and make it easier to understand and use. Additionally we are proposing to remove duplicative definitions and streamline certain sections to simplify Form 13F’s instructions.<sup>78</sup> We estimate that each manager will initially spend 10 hours per year implementing these changes.<sup>79</sup> Therefore, these

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<sup>74</sup> See proposed amendments to Special Instruction 9 of Form 13F.

<sup>75</sup> *Id.*

<sup>76</sup> See Anne Anderson & Paul Brockman, *An Examination of 13F Filings*, 41 J. FIN. RES. 295, 312-314 (2018) (the authors analyzed the accuracy of Form 13F data and concluded that mistakes in applying Form 13F’s rounding guidelines leads to many discrepancies in the reported values on Form 13F).

<sup>77</sup> These character limits are imposed by rule 305 [17 CFR 232.305] of Regulation S-T.

<sup>78</sup> See proposed amendments to General Instructions 1 and 3 well as Special Instructions 3, 7, 8, and 13 of Form 13F. We are also proposing to streamline the discussion in the Paperwork Reduction Act Section of Form 13F.

<sup>79</sup> See Section III below for a discussion of estimated burdens associated with Form 13F under the Paperwork Reduction Act.

amendments would impose \$1,417,350 of costs on all managers who would be required to file Form 13F under the proposed reporting threshold.<sup>80</sup>

We request comment on our proposed technical amendments, and the following issues:

26. Should we require filers to round all dollar values listed on Form 13F to the nearest dollar and remove the requirement to omit “000”? Should we, alternatively, maintain the current rounding conventions? Should we adopt some other rounding conventions? Should we no longer permit rounding?
27. Are there any other amendments we should make to streamline Form 13F or simplify its instructions? If so, what are they?
28. Will our proposed technical amendments increase the accuracy of Form 13F data?
29. Will our proposed technical amendments make Form 13F data easier to understand and more accessible to the public?
30. Would these proposed technical amendments impose costs or burdens on filers?

We are also proposing to amend the instructions on the Form 13F for confidential treatment requests to require managers seeking confidential treatment for information contained in Form 13F to demonstrate that the information is both customarily and actually kept private by the manager, and to show how the release of this information could cause harm to the manager.<sup>81</sup> We believe the proposed amendment is necessary in light of a U.S. Supreme Court decision in June 2019 that changed the standard for determining whether information is “confidential” under exemption 4 of the Freedom of Information Act (“FOIA”).<sup>82</sup> Our proposed amendment is

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<sup>80</sup> *Id.*

<sup>81</sup> See proposed amendments to Instruction 2.d for Confidential Treatment Requests of Form 13F.

<sup>82</sup> 5 U.S.C. 552(b)(4). See *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019) (stating that “[a]t least where commercial or financial information is both customarily and actually treated as

necessary because a FOIA analysis is part of a Form 13F CTR determination. Section 13(f)(4) of the Exchange Act authorizes the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, to delay or prevent public disclosure of certain Form 13F information in accordance with the FOIA. Additionally, Section 13(f)(5) of the Exchange Act 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.” We seek comment on our proposed modified standard for Form 13F CTRs, and the following issue:

31. Does the amendment appropriately reflect the effect of the U.S. Supreme Court’s June 24, 2019, decision in *Food Marketing Institute v. Argus Leader Media* on the type of information that is required to substantiate confidential treatment in accordance with Exchange Act sections 13(f)(4) and (5) and rule 24b-2 thereunder?

Finally, we are proposing technical amendments to Form 13F’s instructions for confidential treatment requests to reflect amendments to the Commission’s FOIA regulations that were amended in 2018.<sup>83</sup>

#### **F. Efficiency, Competition, and Capital Formation**

We are sensitive to the costs and benefits of the rules we are proposing, and section 23(a)(2) of the Exchange Act requires us to consider, among other matters, the impact that any new rule would have on competition and states that the Commission shall not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the

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private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4”).

<sup>83</sup> Proposed amendments to Instructions for Confidential Treatment Requests of Form 13F. *See* Amendments to the Commission’s Freedom of Information Act Regulations, Exchange Act Release No. 83506 (June 25, 2018) [83 FR 30322] (June 28, 2018).

purposes of the Exchange Act. In addition, section 3(f) of the Exchange Act directs us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The impacts of the proposed amendments on efficiency, competition, and capital formation are discussed throughout this section and elsewhere in this release. The following discussion highlights several such impacts.

The Commission believes that, for smaller managers, the proposed Form 13F reporting threshold increase is likely not only to enhance competition by lowering the cost to participate in the market but also to promote efficiency, which can benefit investors in the form of lower management fees and/or enhanced services. Furthermore, because the proposed Form 13F reporting threshold increase would potentially reduce the exposure of smaller managers to harmful, and in many cases inappropriate, actions by other market participants, such as front running, smaller managers would likely be encouraged to invest in small and mid-size portfolio companies that are more susceptible to the harmful effects of these behaviors.<sup>84</sup> This increased investment would facilitate capital formation in smaller and medium sized companies. Similarly, protecting smaller managers from these harmful behaviors would likely promote competition between smaller and larger managers by helping to level the playing field for smaller managers. Investors would similarly benefit from the price impacts of this competition as well as any reduction in harmful trading behaviors.

The Commission also believes that the proposed increase in the Form 13F reporting threshold would enhance efficiency by reducing the reporting burden of Form 13F which would

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<sup>84</sup> See *supra* footnote 34.

enable smaller managers to devote more resources to, for example, market research that might promote price discovery. Similarly, the Commission believes that the proposed technical amendments would increase efficiency by enhancing the accuracy of the data provided on Form 13F and thus improving the data's usefulness. Furthermore, by requiring managers to provide additional identifying information, and identifying information of other managers covered by the report, these proposed amendments would enhance efficiency by making it easier for regulators and the public to identify a Form 13F filer's other regulatory filings and the interrelationships between managers who share investment discretion over 13(f) securities.

This rulemaking also would remove the omission threshold for Form 13F filers. The Commission believes that this will have only negligible effects on efficiency, competition, and capital formations because, on the one hand, the additional immaterial information is not likely to be of significant value, and on the other hand, the costs of reporting these small positions is *de minimis* for filers with at least \$3.5 billion of 13(f) securities. Further, to the extent an asymmetry in reporting could occur between larger and smaller managers with respect to holdings in small and medium sized companies, if a larger manager were to determine that disclosure of a small holding may negatively affect its competitive position, we believe that a larger manager would be able to seek appropriate protection without undue burden by filing a Form 13F CTR.

We request comment on all aspects of our analysis, including the potential benefits and costs of the proposed amendments, and whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on the estimates of costs and benefits for the affected parties.



32. Would relieving smaller managers from the compliance burdens of Form 13F reduce costs and enhance competition and add efficiency, including enhancing the ability of smaller managers to compete in the market? To what extent, if any, would the benefits be passed on to investors in the form of lower management fees and/or enhanced services? Would the proposed increase in the Form 13F threshold protect smaller managers from harmful behaviors such as front-running? Would reducing this risk for smaller managers promote capital formation by encouraging these managers to invest more in small and mid-size portfolio companies? Would reducing this risk for smaller managers benefit investors?
33. Would the proposed technical amendments increase efficiency by enhancing the accuracy of Form 13F data? Are the cost estimates appropriate?
34. Would the proposed additional identifying information increase efficiency by making it easier to identify a Form 13F filer’s other regulatory filings and the interrelationships between managers who share investment discretion over 13(f) securities?

### **III. PAPERWORK REDUCTION ACT ANALYSIS**

Certain provisions of the proposed amendments to Form 13F would affect the “collection of information” burden under Form 13F within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>85</sup> We are submitting the proposed collection of information to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>86</sup> The title for the existing collection of information is: “Form 13F, Report of Institutional Investment Managers

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<sup>85</sup> 44 U.S.C. 3501 through 3520.

<sup>86</sup> 44 U.S.C. 3507(d); 5 CFR 1320.11.

(Pursuant to Section 13(f) of the Securities Exchange of 1934)” (OMB Control No. 3235-0006).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The requirements of this collection of information are mandatory. Responses are not kept confidential, unless they are confidential pending review pursuant to rule 24b-2(c) under the Exchange Act or the Commission grants an application for confidential treatment pursuant to section 13(f)(4) of the Exchange Act.

#### **A. Form 13F**

In our most recent PRA submission for Form 13F, we estimated a total hour burden of 472,521.6 hours, with an internal cost burden of \$31,186,425.60, and with no annual external cost burden.<sup>87</sup> Based on staff analysis and outreach to managers, however, we believe that these estimates do not reflect all of the information collection costs associated with Form 13F. The current burden estimates for Form 13F assume that all of the functions are carried out by a compliance clerk, whereas we understand that additional professionals are typically involved. The current burden estimates also do not include external costs for third-party vendors, which we understand many managers use in connection with their filings on Form 13F, or external legal counsel, who may provide advice in connection with the form’s reporting requirements or actual or potential requests for confidential treatment. Furthermore, the current burden estimates assume that the same number of hours and costs are necessary to prepare and file Form 13F-HR and 13F-NT filings, even though reports on Form 13F-HR would involve greater burdens. This

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<sup>87</sup> This estimate is based on the last time the rule’s information collection was submitted for PRA renewal in 2018.

results in a current overestimation of the costs associated with filing Form 13F-NT. Therefore, we are revising the current PRA burdens associated with filing Form 13F.

The table below summarizes our adjustments to the current PRA estimates and the initial and ongoing annual burden estimates associated with the proposed amendments to Form 13F. Staff estimates that the proposed amendments will not change the PRA hour burdens associated with making amended filings on Form 13F.

**Table 2: Form 13F PRA Estimates**

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs <sup>1</sup>
<b>REVISIONS TO CURRENT PRA BURDEN ESTIMATES</b>						
<b>Revised Burdens for 13F-HR Filings</b>						
Current estimated annual burden of Form 13F-HR per filer		80.8 hours	x	\$66 <sup>2</sup>	\$5,332.80	
Revised current annual estimated burden per filer		80.8 hours x 5,089 filers <sup>3</sup>	x	\$257.70 (blended rate for compliance attorney, senior programmer, and compliance clerk) <sup>4</sup>	\$20,822.16 x 5,089 filers	\$789 <sup>5</sup> x 5,089 filers
Revised current annual burden of Form 13F-HR filings		411,191.2 hours			\$105,963,972	\$4,015,221 <sup>6</sup>
<b>Revised Burdens for 13F-NT Filings</b>						
Current estimated annual burden of Form 13F-NT		80.8 hours				
Revised current estimated Form 13F-NT burden per filing		4 hours x 4 filings				
Revised current annual burden of Form 13F-NT per filer		16 hours x 1,570 filers <sup>7</sup>	x	\$71 (wage rate for compliance clerk)	\$1,136 x 1,570 filers	\$300 x 1,570 filers
		25,120 hours			\$1,783,520	\$471,000
<b>Revised Burdens for Form 13F Amendment Filings</b>						
Current estimated burden per amendment filing		4 hours		\$66.00	\$264	
Revised current estimated burden per amendment		4 hours x 1,066 amendments	x	\$257.70 (blended rate for compliance attorney, senior programmer, and compliance clerk)	\$1,030.80 x 1,066 amendments	\$300 x 1,066 amendments
Revised current annual estimated burden of all amendments		4,264 hours			\$1,098,832.80	\$319,800
<b>PROPOSED AMENDMENTS TO FORM 13F</b>						

Estimated Form 13F-HR Burdens						
Proposed Amendments to Form 13F-HR (additional identifying information, technical amendments, change in omission threshold) per filer	16 hours	5.8 hours <sup>8</sup>	x	\$257.70 (blended rate for compliance attorney, senior programmer, and compliance clerk) <sup>9</sup>	\$1,494.66	\$0
New annual estimated Form 13F-HR burden per filer		86.6 hours			\$22,316.82	\$789
Number of annual filers		x 550 filers <sup>10</sup>			x 550 filers	x 550 filers
Total new annual burden		47,630 hours			\$12,274,251	\$433,950
Estimated Form 13F-NT Burdens						
Proposed Amendments to Form 13F-NT (additional identifying information)	6 hours	2.5 hours <sup>8</sup>	x	71.00 (wage rate for compliance clerk) <sup>11</sup>	\$177.50	\$0
New annual estimated Form 13F-NT burden per filer		18.5 hours			\$1,313.50 x 738 filers	\$300 x 738 filers
Number of annual filers		x 738 filers <sup>12</sup>				
Total new annual burden		13,653 hours			\$969,363	\$221,400
Estimated Amendment Filings Burdens						
Revised estimated number of Amendments		344 amendments <sup>13</sup> x 4 hours				\$300 x 344 amendments
Estimated total burden of amendments		1,376 hours	x	\$257.70 (blended rate for compliance attorney, senior programmer, and compliance clerk)	\$354,595.2	\$103,200
TOTAL ESTIMATED FORM 13F BURDEN						
Currently approved burden estimates		472,521.6 hours			\$31,186,425.60	\$0
Revised current burden estimates		440,575.2 hours			\$108,846,325	\$4,806,021
Burden estimates under the proposal		62,659 hours			\$13,598,209.2	\$758,550

**Notes:**

- The external costs of complying with Form 13F can vary among filers. Some filers use third-party vendors for a range of services in connection with filing reports on Form 13F, while other filers use vendors for more limited purposes such as providing more user-friendly versions of the list of section 13(f) securities. For purposes of the PRA, we estimate that each filer will spend an average of \$300 on vendor services each year in connection with the filer's four quarterly reports on Form 13F-HR or Form 13F-NT, as applicable, in addition to the estimated vendor costs associated with any amendments. In addition, some filers engage outside legal services in connection with the preparation of requests for confidential treatment or analyses regarding possible requests, or in connection with the form's disclosure requirements. For purposes of the PRA, we estimate that each manager filing reports on Form 13F-HR will incur \$489 for one hour of outside legal services each year.
- \$66 was the estimated wage rate for a compliance clerk in 2018.
- This estimate is based on the number of 13F-HR filers as of December 2018.
- The \$257.7 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$368), a senior programmer (\$334) and in-house compliance clerk (\$71). \$257.7 is based on the following calculation:  $(\$368 + \$334 + \$71) / 3 = \$257.7$ . The \$368 per hour and \$334 per hour figures for a compliance attorney and a senior programmer, respectively, are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The \$71 per hour figure for a compliance clerk is based on salary information from the SIFMA Report,

modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

5. \$789 includes an estimated \$300 paid to a third-party vendor in connection with the Form 13F-HR filing as well as an estimated \$489 for one hour of outside legal services.

6. We estimate that Form 13F-HR filers will require some level of external legal counsel in connection with these filings.

7. This estimate is based on the number of Form 13F-NT filers as of December 2018.

8. Includes initial burden estimates annualized over a three-year period, plus 0.5 hours of ongoing annual burden hours.

9. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed amendments that we believe otherwise would be involved in preparing and filing reports on Form 13F-HR.

10. This estimate is based on the Form 13F-HR filers as of December 2018 that would continue to be required to file Form 13F under the proposed \$3.5 billion reporting threshold.

11. These PRA estimates assume that the same types of professionals would be involved in satisfying the proposed amendments that we believe otherwise would be involved in preparing and filing reports on Form 13F-NT.

12. This estimate is based on the number of Form 13F-NT filers as of December 2018, and assumes that a Form 13F-NT filing linked to a Form 13F-HR filing of a manager that exceeds the \$3.5 billion threshold would continue to be filed.

13. We estimate that 86 filers would file amendments to Form 13F if the \$3.5 billion reporting threshold is adopted.  $86 \text{ amendments} \times 4 \text{ annual filings} = 344 \text{ amendments}$ .

## **B. Request for Comments**

We request comment on whether these estimates are reasonable. Specifically, we request comment on whether our estimated average costs are reasonable in light of the proposed increase in the Form 13F reporting threshold. The proposal would limit the form's reporting obligations to larger managers, while the average burden estimate of 86.6 hours represents the average burden of complying with Form 13F across all current filers. Furthermore, the proposal assumes that a compliance attorney, a senior programmer, and a compliance clerk would be equally involved in fulfilling a manager's compliance burdens associated with Form 13F. We request comment on these assumptions, recognizing that there will be some variation among different managers. Additionally, we seek comment on our estimated external costs of complying with Form 13F-HR and any amendments and Form 13F-NT.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, MBX.OMB.OIRA.SEC\_desk\_officer@omb.eop.gov, and should send a copy to, Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-08-20. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-08-20, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### **IV. INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Pursuant to Section 605(b) of the Regulatory Flexibility Act (“RFA”),<sup>88</sup> the Commission hereby certifies that the proposed amendments to rule 13f-1 and Form 13F under the Exchange Act, relating to increasing the reporting threshold for Form 13F from \$100 million to \$3.5 billion, along with certain technical amendments, would not, if adopted, have a significant economic impact on a substantial number of small entities. The definition of the term “small entity” in the Exchange Act does not explicitly reference institutional investment managers.<sup>89</sup>

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<sup>88</sup> 5 U.S.C. 605(b).

<sup>89</sup> 17 CFR 240.0-10 (“rule 0-10”).

However, rule 0-10 provides that the Commission may “otherwise define” small entities for purposes of a particular rulemaking proceeding. For purposes of the proposed amendments relating to the reporting threshold of Form 13F, the Commission has determined to use the definition of small entity under 17 CFR 275.0-7(a) as more appropriate to the functions of managers. The Commission believes that the proposed definition would help ensure that all persons or entities that might be institutional investment managers under section 13(f) of the Exchange Act will be included within a category addressed by the definition. Therefore, for purposes of this rulemaking and the RFA, a manager is a small entity if it: (i) has assets under management having a total value of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.<sup>90</sup> The Commission requests comments on the use of this definition.

Managers are not required to submit reports on Form 13F unless they exercise investment discretion with respect to accounts holding 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million. Therefore, no small entities for purposes of rule 0-10 under the Exchange Act are affected by the form or by an increase to the reporting threshold. The Commission requests written comments regarding these certifications. The Commission requests that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

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<sup>90</sup> 17 CFR 275.0-7(a) (“rule 0-7(a)”). Recognizing the growth in assets under management at investment advisers since rule 0-7(a) was adopted, the Commission plans to revisit the definition of a small entity in rule 0-7(a).

## V. CONSIDERATION OF THE IMPACT ON THE ECONOMY

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”),<sup>91</sup> we must advise OMB whether a proposed regulation constitutes a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the economy on an annual basis. The Commission requests that commenters provide empirical data and other factual support for their views to the extent possible.

## VI. STATUTORY AUTHORITY

The Commission is proposing amendments to rule 13f-1 and Form 13F pursuant to the authority set forth in sections 3(b), 13(f), 23, 24, and 36 of the Exchange Act [15 U.S.C. 78c(b), 78m(f), 78w, 78x, and 78mm].

### List of Subjects

#### 17 CFR Part 240

Confidential business information, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

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<sup>91</sup> Public Law 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).



## TEXT OF PROPOSED RULE AND FORM AMENDMENTS

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The general authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 506, 126 Stat. 326 (2012), unless otherwise noted.

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#### **§240.13f-1 [Amended]**

2. Amend §240.13f-1 by:
  - a. In paragraph (a)(1), revising “\$100,000,000” to read “\$3.5 billion”; and
  - b. In paragraph (c), revising “\$100,000,000” to read “\$3.5 billion”.

### **PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

3. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

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4. Form 13F (referenced in § 249.325) is amended by:

a. In General Instruction 1, revising “\$100,000,000” to read “\$3.5 billion”;

b. In General Instruction 3, revising the first sentence to read “Rule 13f-1(a)(1)

provides that a Manager must file a Form 13F report with the Commission within 45 days after the end of the calendar year and each of the first three calendar quarters of the subsequent calendar year.”;

c. In General Instruction 3, replacing “the EDGAR Filing” with “the filing made on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system”;

d. In the last sentence of the second paragraph of the Instructions for Confidential Treatment Requests, delete the phrase “the Commission’s rules and regulations adopted under”;

e. In Instruction 2.d for Confidential Treatment Requests, revising it to read as follows: “Demonstrate that the information is both customarily and actually kept private by the Manager, and how release of this information could cause harm to the Manager.”

f. In Special Instruction 3, deleting the phrase “(and in the EDGAR submission header)”;

g. In Special Instruction 5, revising it to read as follows: “Present the Cover Page and the Summary Page information in the format and order provided in the form. If the Manager has a number assigned by the Financial Industry Regulatory Authority’s Central Registration Depository system or by the Investment Adviser Registration Depository system (“CRD number”), provide the Manager’s CRD number. If the Manager has a filing number (*e.g.*, 801-, 8-, 866-, 802-) assigned by the Commission (“SEC filing number”), provide the Manager’s SEC filing number. The Cover Page may include information in addition to the required information,

so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.”;

- h. In Special Instruction 7, deleting the phrase “on the Summary Page”;
- i. In Special Instruction 7.a, deleting the phrase “on the Summary Page”;
- j. In Special Instruction 8, deleting the phrase “on the Summary Page”;
- k. Replacing the first sentence of Special Instruction 8.b with the following “If this Form 13F report reports the holdings of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with any CRD Number or SEC filing number assigned to each Manager and, if known, the Managers’ respective Form 13F file numbers (The Form 13F file numbers are assigned to Managers when they file their first Form 13F).”;
- l. In Special Instruction 9, revising “rounded to the nearest one thousand dollars (with “000” omitted)” to read “rounded to the nearest dollar”;
- m. Deleting Special Instruction 10 and renumbering Special Instructions 11, 12, and 13 to 10, 11, and 12, respectively;
- n. In renumbered Special Instruction 10, revising “\$100,000,000” to read “\$3.5 billion”;
- o. In renumbered Special Instruction 11.b.i, revising the phrase “rule 13f-1(c) (the “13F List”)” to read “the 13F List”; and

p. Deleting renumbered Special Instruction 12 in its entirety and replacing it with the following:

**“Filing of Reports**

13. Reports must be filed electronically using EDGAR in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.”

q. Deleting the Paperwork Reduction Act Information section in its entirety and replacing it with the following:

**“PAPERWORK REDUCTION ACT INFORMATION**

Persons who are to respond to the collection of information contained in this form are not required to respond to the collection of information unless the form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, Washington, DC 20549. OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.”;

r. In the Institutional Investment Manager Filing this Report section on the Cover Page, adding “CRD Number (if applicable): \_\_\_\_\_” and “SEC Filing Number (if applicable): \_\_\_\_\_”;

s. In the List of Other Managers Reporting for this Manager section on the Cover Page, adding “CRD Number (if applicable)” and “SEC Filing Number (if applicable)” columns;

t. In the Report Summary on the Form 13F Summary Page, replacing “(thousands)” with “(round to the nearest dollar)” in the Form 13F Information Table Value Total row.

u. In the List of Other Included Managers section of the Form 13F Summary Page, adding “CRD Number (if applicable)” and “SEC Filing Number (if applicable)” columns; and

v. In the Form 13F Information Table, replacing “(x\$1000)” with “(to the nearest dollar)” in the Value subcolumn.

**Note: The text of Form 13F does not, and this amendment will not, appear in the Code of Federal Regulations.**

By the Commission.

Dated: July 10, 2020.

Vanessa A. Countryman,

Secretary.