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SEC Proposes Increasing the 13F Threshold to $3.5 billion

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On July 10, 2020, the Securities and Exchange Commission ("SEC") proposed significantly increasing the reporting threshold requiring the filing of a Form 13F to $3.5 billion, a 35-fold increase from the current threshold.[1] Currently, under Rule 13f-1, investment managers that manage at least $100 million worth of equity securities publicly traded in the U.S. ("13(f) securities") on the last day of any calendar month are required to file a Form 13F with the SEC. The form includes a table listing all of the U.S.-traded equity securities managed by the investment manager, subject to a *de minimis* exception. Confidential treatment can also be requested. The $100 million threshold has not changed since Congress adopted the requirements in 1975 and the rules were adopted by the SEC in 1978.

The SEC stated that it is proposing the increase to $3.5 billion to provide relief for smaller investment managers. According to the SEC, the 13F rules were intended to capture the largest institutional managers, and increasing the reporting threshold to $3.5 billion is intended to "…account for the changes in the size and structure of the U.S. equities market since 1975."

The SEC is also proposing to make several other changes to the 13F rules, including:

- Removing the *de minimis* exception from reporting certain equities in the Form 13F table. Currently, filers can omit equity positions if they manage fewer than 10,000 shares, and these shares represent less than $200,000 in aggregate fair market value.
- Amending the instructions on Form 13F for confidential treatment requests, to require managers seeking confidential treatment for information contained in Form 13F to show that (i) the information is both customarily and actually kept private by the manager, and (ii) how the release of this information could cause harm to the manager. These proposed changes are intended to reflect the standard for determining whether information is "confidential" under exemption 4 of the Freedom of Information Act ("FOIA") outlined in the U.S. Supreme Court's 2019 decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019),

and to conform to the SEC's current FOIA rules.

- Making certain technical and procedural changes to how Form 13F is prepared and filed.

The SEC stated that it is considering the proposed rule changes in response to a 2003 rulemaking petition.[2] The SEC has requested that comments on the proposed rule changes be submitted within 60 days. We expect that the proposal will receive numerous comments from investment advisors, issuers, and others.

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[1] SEC Release No. 34-89290 (July 10, 2020), available at https://www.sec.gov/rules/proposed/2020/34-89290.pdf.

[2] The SEC has also received other proposals to amend the 13F rules, including shortening the 45-day deadline for filing Form 13F after the end of a quarter, but is not considering those petitions until after it addresses the current proposals.

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