

# SEC Proposes Substantial Increase to Form 13F Reporting Threshold: *Proposed New Trigger is \$3.5 billion*

July 15, 2020

On July 10, 2020, the Securities and Exchange Commission (the “SEC”) proposed to amend rule 13f-1 and Form 13F (the “Proposed Amendment”) under the Securities Exchange Act of 1934 (the “Exchange Act”) by substantially raising the reporting threshold from \$100 million to \$3.5 billion.<sup>1</sup> Section 13(f) requires an institutional manager to file Form 13F quarterly with the SEC if the manager exercises investment discretion with respect to accounts holding specific public equity securities having an aggregate fair market value of at least \$100 million.

To ensure that reporting thresholds continue to be appropriate, the SEC proposes to conduct reviews on Form 13F reporting every five years and make adjustments as necessary. Adjustments would not be automatic but rather subject to a notice and open comment period to allow the SEC to consider public comments on the effects of any adjustments. The SEC does not propose any particular formula to determine adjustments in the future.

The Proposed Amendment also eliminates the omission threshold for holdings of fewer than 10,000 shares (or less than \$200,000 principal amount of convertible debt securities) and less than \$200,000 aggregate fair market value) for individual securities. The SEC seeks comment on, among other things, whether the retention (and increase) of an omission exception would be appropriate.

Finally, the Proposed Amendment proposes technical amendments to Form 13F and its instructions, primarily to modernize reporting. Of note, however, the SEC proposes to amend the requirements for confidential treatment of Form 13F information by requiring that managers demonstrate (i) that information is both customarily and actually kept private by the manager and (ii) how the release of information could cause harm to the manager. This proposed change is intended to reflect the U.S. Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, which modified the standard for determining whether information is “confidential” under exemption 4 of

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<sup>1</sup> Reporting Threshold for Institutional Investment Managers, SEC Release No. 34-89290, File No. S7-08-20 (July 10, 2020) (referred to herein as the “Proposal”).

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the Freedom of Information Act. The SEC seeks feedback on whether this proposed change appropriately reflects the effects of the Supreme Court decision.

Comments on the Proposed Amendment will be due within 60 days after the publication of the Proposal in the Federal Register; we expect publication in the next few weeks.

While we expect that the Proposed Amendment, if adopted, would provide reporting relief for small institutional investment managers and large managers that do not concentrate clients in public equity securities, the proposed elimination of the omission exception may increase reporting obligations for large investment managers who will continue to be required to file Form 13F. The proposed changes to confidential requests may also increase a manager's burden in seeking to protect trade secrets and other proprietary information.

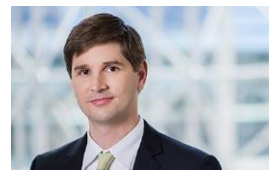
Please do not hesitate to contact us with any questions.



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