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SEC Proposes Amendments to Form 13F Reporting Requirements

The U.S. Securities and Exchange Commission ("SEC") has proposed (available here) amendments to Rule 13f-1 of the U.S. Securities Exchange Act of 1934 (the "Exchange Act") and Form 13F. The principal proposed changes would provide for raising the reporting threshold from $100 million to $3.5 billion and eliminating the so-called "omission threshold" for reporting on Form 13F of holdings of individual securities (measured by number of shares or value). According to the SEC, the increase in the threshold is intended to reflect the change in size and structure of the U.S. equities markets since 1975, when Congress adopted the reporting requirements.

Current Requirements

Section 13(f) currently requires investment asset managers[1] to file reports with the SEC if they exercise investment discretion over accounts holding certain equity securities ("Section 13(f) securities")[2] with an aggregate fair market value on the last trading day of any month of any calendar year of at least $100 million. Rule 13f-1 requires these managers to report quarterly on Form 13F if the accounts over which they exercise investment discretion hold in aggregate more than $100 million in Section 13f securities. Form 13F permits a manager to omit, from the reporting on Form 13F, 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 (together, the "omission threshold").[3]

1 "Institutional investment manager" is an entity that either invests in, or buys and sells, securities for its own account. For example, banks, insurance companies and broker/dealers are institutional investment managers. So are corporations and pension funds that manage their own investment portfolios. An institutional investment manager is also a natural person or an entity that exercises investment discretion over the account of any other natural person or entity.

2 "Section 13(f) securities" are defined as 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 official list of Section 13(f) securities is published by the SEC quarterly and is available here.

3 The SEC's Frequently Asked Questions About Form 13F (available here) provides detailed information on who needs to file the form and what is required to be disclosed.

Proposed Amendments

Principal Amendments

- **Threshold increase** – the SEC proposes to increase the reporting threshold for investment managers from $100 million to $3.5 billion. The SEC believes that raising the threshold would provide meaningful regulatory relief for smaller managers, resulting in approximately 4,500 current Form 13F filers (or 89%) no longer being required to report. At the same time, the group of managers that would be required to continue to report under the new threshold of $3.5 billion would continue to represent 90.8% of the dollar value of all Form 13F holdings. The proposed threshold was selected based on the growth in stock markets since 1975 and the SEC's view of the original legislative intent of the reporting requirement to focus on larger managers.

  The SEC would conduct periodic reviews (every five years) of the reporting threshold to determine whether the threshold continues to be appropriate or whether it should be adjusted to account for changes in size and structure of the market. The SEC declined to propose automatic future adjustments.

  Managers that currently fall below the proposed reporting threshold must continue to submit reports until the proposed rules are promulgated and effective.

- **Elimination of omission threshold** – the SEC proposes to eliminate the omission threshold on Form 13F. The SEC believes that reporting securities holding information below omission threshold would not be burdensome to the larger managers that would continue to be required to report under the increased $3.5 billion threshold since such managers already have in place trading and other systems that would allow them to export all of the managers' positions (regardless of size) for purposes of Form 13F reporting.

Other Amendments

- **Reporting information** – the SEC proposes to amend Form 13F to require a manager to provide the following additional identifying information: (i) its central registration depository (CRD) number and SEC filing number, if any, and (ii) the CRD 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 of Form 13F. Additionally, the SEC proposes to amend the instructions to Form 13F for managers seeking confidential treatment for information included on Form 13F to require them to demonstrate that the information is both customarily and actually kept private by the manager and that its disclosure could cause harm to the manager.

- **Technical amendments** – the SEC proposes to make certain technical amendments to Form 13F in order to streamline the change in format of Form 13F to the XML data format. The changes include rounding the dollar values to the nearest dollar, removing the requirement that a manager omit "000" when reporting securities with values in millions and more, and removing the 80-character limit for information included on the cover page.

The proposal is subject to a 60-day comment period.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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