

## [Securities Regulation Daily Wrap Up, TOP STORY—SEC proposes to raise Form 13F reporting threshold to \\$3.5 billion, \(Jul. 10, 2020\)](#)

Securities Regulation Daily Wrap Up

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Commissioner Lee dissented from the proposal to raise the threshold for investment manager reporting to \$3.5 billion in holdings from its current level of \$100 million.

The SEC proposed to raise the reporting threshold for institutional investment managers, which has stood at \$100 million since 1978, to \$3.5 billion. The Commission [says](#) that the increase is proportionate to the increase in market value of U.S. equities since Congress set the threshold in directing the SEC to adopt Form 13F. Commissioner Lee, however, [dissented](#), saying that the proposal "joins a long list of recent actions that decrease transparency and access to information about our markets." There is a 60-day comment period ([Release No. 34-89290](#), July 10, 2020).

According to the SEC's release, the proposed threshold would retain disclosure of 90 percent of currently reported holdings data by dollar value but eliminate the filing requirement for the nearly 90 percent of filers that are smaller managers. The SEC said that legislative history indicates that the statutory reporting threshold was meant to capture large institutional managers. By raising the reporting threshold, smaller managers would save a collective \$68 million to \$136 million in compliance costs. Meanwhile, the rulemaking would remove the omission threshold for Form 13F filers, requiring managers that meet the \$3.5 billion threshold to report even small positions. The proposal would also direct SEC staff to review the reporting threshold every five years and recommend any adjustment to the Commission.

The proposal observes that since 1975, the number of Form 13F filers has increased by a factor of 17, even as the overall size of the U.S. equities market has declined. Currently, over 5000 investment managers are required to file a Form 13F. Raising the threshold to \$3.5 billion would reduce that figure to 550. The SEC acknowledges that the information reported on the form is used for a variety of purposes both inside and outside the Commission. However, it posits that some of this data is now available elsewhere, notably on Form N-PORT.

**Lee dissents.** Commissioner Allison Herren Lee said the proposal downplays the ways that Form 13F data is used and the costs of raising the reporting thresholds. The proposal does not address the concern, raised last year by NIRI, that greater transparency is critical to smaller issuers that cannot afford to pay for trading data analysis by stock surveillance firms.

The commissioner also remarked that a Paperwork Reduction Act (PRA) estimate of the information-collecting burdens is not a substitute for economic estimates and that even the proposal's PRA estimate rests on faulty assumptions. While Lee said that she supports identifying ways to help smaller managers compete effectively, she is skeptical that the "relatively small savings" identified in the proposal for this population of managers would advance this goal.

In addition, Lee noted that academics, market researchers, and others have developed new uses of the data disclosed on Form 13F since it was first adopted, but there is no discussion in the release about the costs of the loss of this data to these parties or to the public. She also lamented the proposing release's limited discussion regarding the costs to the Commission of losing a portion of this data.

Finally, Lee notes that the 1975 enabling statute set the reporting threshold at \$100 million "or such lesser amount." In other words, the Commission can lower the reporting threshold, but it seems to lack the statutory authority to raise it. The release only hints at the idea that the SEC's exemptive authority empowers it to increase the threshold. Using the exemptive authority in this way "would rewrite the statute to reflect the opposite meaning

from its plain language," the commissioner said, and she is "concerned by the brevity with which this issue is treated in the release."

This is [Release No. 34-89290](#).

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