

# SEC Proposes To Raise Form 13F Reporting Threshold From \$100 Million to \$3.5 Billion

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On July 10, 2020, the Securities and Exchange Commission (SEC) voted 3-1 to approve proposed rules that, among other things, would raise the Form 13F reporting threshold for institutional investment managers<sup>1</sup> (managers) from \$100 million to \$3.5 billion. If this change takes effect, it would be the first time the threshold has changed since it was adopted over 40 years ago. The proposal, if adopted, would provide relief for a significant number of smaller managers.

## Background

With limited exception for individuals managing investments for their own accounts, Section 13(f) of the Securities Exchange Act of 1934 (Exchange Act) requires each manager who exercises investment discretion with respect to accounts holding certain equity securities (so-called Section 13(f) securities, identified in a list published quarterly by the SEC) with an aggregate fair market value of at least \$100 million to file a report with the SEC. Section 13(f) also authorizes the SEC to determine the details of the reporting requirements and to exempt any manager from the requirements of Section 13(f) consistent with the statutory goals of protecting investors and maintaining fair and orderly markets.

SEC Rule 13f-1, which implements Section 13(f), requires that managers file four quarterly reports on Form 13F if they exercise investment discretion over accounts that hold in aggregate \$100 million or more in Section 13(f) securities on the last trading day of any month of any calendar year. The SEC intends Form 13F to inform the SEC's decision-making in maintaining fair and orderly securities markets by requiring data from managers of large investment portfolios about their market activities and holdings.

## Proposed Increase in Form 13F Reporting Threshold

The proposed rules would increase the Form 13F reporting threshold from \$100 million to \$3.5 billion, which is proportionally the same market value of U.S. equities that \$100 million represented in 1975 when Congress first set the threshold. The proposed threshold, according to the SEC, would retain disclosure of over 90% of the dollar value of the holdings data currently reported while relieving nearly 90% of the current filers that are smaller managers.

The SEC also proposes to review the Form 13F reporting threshold every five years to assess whether it aligns with the market environment. Any future change to the threshold would be made through notice-and-comment rulemaking.

One anticipated effect of the proposed rules, if adopted, is that positions of smaller managers will not appear on quarterly reports, making it more difficult to confirm whether such managers hold such positions or have changed the size of their investment.

## Other Proposed Amendments

The proposed rules include the following additional proposed amendments to Rule 13f-1 and Form 13F:

- **Remove the Omission Threshold for Individual Securities on Form 13F.** Form 13F currently allows managers to omit holdings of fewer than 10,000 shares or less than \$200,000 principal amount of convertible debt securities and less than \$200,000

<sup>1</sup> The term "institutional investment manager" is broadly defined as an entity that trades securities for its own account or exercises investment discretion with respect to the account of any other person. See 15 U.S.C. § 78m(f)(6)(A). Institutional investment managers include, for example, investment advisers, banks, insurance companies, broker-dealers, pension funds and corporations.

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aggregate fair market value. The proposal would remove this exemption and require managers that meet the \$3.5 billion threshold to report all of their positions in Section 13(f) securities regardless of the size.

- **Require Filers To Provide Certain Additional Identifying Information.** The proposal would require each Form 13F filer to provide, as applicable, its Central Registration Depository number with the Financial Industry Regulatory Authority or the Investment Adviser Registration Depository and the filer's SEC filing number.
- **Make Certain Technical Amendments to Form 13F.** These amendments, among other things, are intended to conform the ability of managers to obtain confidential treatment for information contained in Form 13F to a recent U.S. Supreme Court determination; they require managers to demonstrate only that the information is both customarily and actually kept private by the manager and to show how the release of the information could cause harm to the manager (rather than the "substantial harm" standard found in the current instructions).<sup>2</sup>

<sup>2</sup> The proposal notes that these changes are necessary in light of a [U.S. Supreme Court decision](#) that changed the standard for determining whether information is "confidential" under the Freedom of Information Act. See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

## Next Steps

Comments on the proposal will be due 60 days after publication in the Federal Register. The proposal includes specific requests for comment on a number of aspects of the proposed rules, in addition to soliciting comments generally.

[SEC Chairman Jay Clayton issued a statement](#) noting that the proposed reporting threshold would "further[] the statutory goal of enabling the SEC to monitor holdings of larger investment managers while reducing unnecessary burdens on smaller managers."

[Commissioner Allison Herren Lee dissented](#), expressing her concerns that the proposed rules lack a sufficient analysis of the costs and benefits and would reduce visibility into discretionary accounts managed by smaller managers. She also questioned whether the plain text of the Exchange Act authorizes the SEC to increase the Form 13F reporting threshold as proposed.

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