

Private Equity Regulatory Update

July 31, 2020

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COVID-19 Update

Please refer to Davis Polk's "[Coronavirus Updates](#)" webpage for content related to the outbreak.

Rules and Regulations

SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers

In a July 10, 2020 release ("**Release**"), the Securities and Exchange Commission ("**SEC**") proposed certain amendments to Rule 13f-1 under the Securities Exchange Act of 1934 ("**Exchange Act**") and Form 13F, including an increase in the reporting threshold for institutional investment managers from \$100 million to \$3.5 billion. According to the Release, the SEC believes that this new threshold better reflects the expanded U.S. equities market and will help further the purpose of the rule.

Section 13(f) and Rule 13f-1

Section 13(f) of the Exchange Act and Rule 13f-1 thereunder require an institutional investment manager to file a report on Form 13F if the manager exercises investment discretion over accounts that contain certain equity securities ("**13(f) securities**") with an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million. According to the Release, the purposes of the reporting requirement are to: (i) create a "central repository of historical and current data about the investment activities of institutional investment managers," (ii) improve available data about the holdings of institutional investment managers "and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence" and (iii) "increase investor confidence in the integrity of the U.S. securities markets."

Under Section 13(f), the SEC has rulemaking authority to adjust the format and frequency of the reports, the nature of the disclosures in the reports, and the reporting threshold "of at least \$100,000,000 or such lesser amount." The Release noted that the 1975 Amendments Senate Report stated that the SEC "would 'have authority to raise or lower' the threshold" and listed out certain considerations that the SEC should consider when adjusting the threshold, including the burden of reporting and the informational value provided by the disclosure.

Proposed Amendments

The Release noted that since the adoption of Rule 13f-1 in 1978, the securities market has grown exponentially from \$1.1 trillion in 1979 to \$35.6 trillion in 2019. According to the Release, 5,089 managers

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are currently required to file Form 13F, many of whom are small managers – the compliance burden on such managers is great while the information value received from requiring them to file is limited. Therefore, as stated in the Release, the SEC is proposing to increase the reporting threshold from \$100 million to \$3.5 billion, which reflects the growth in the US equities market since 1975 and would retain disclosure of “90.8 percent of the dollar value of the Form 13F holdings data currently reported while relieving the reporting burdens from approximately [. . .] 89.2 percent of all current filers.” According to the Release, the SEC intends to have its staff reevaluate the threshold every five years and make a change, if necessary.

In addition to increasing the threshold, the proposed amendments would also:

- eliminate the omission threshold which allows managers to omit holdings of fewer than 10,000 shares and less than \$200,000 aggregate fair market value;
- require additional identifying information to be reported on Form 13F, including a manager’s CRD number and SEC filing number, if any;
- make technical amendments consistent with the eXtensible Markup Language (“XML”) format; and
- require managers seeking confidential treatment to demonstrate that “the information is both customarily and actually kept private by the manager and to show how the release of this information could cause harm to the manager.”

Commissioner Allison Herren Lee’s Dissenting Opinion

In a July 10, 2020 statement, SEC Commissioner Allison Herren Lee expressed concerns with the proposed amendments, arguing that: (i) the proposal decreases transparency and reduces the SEC’s and the public’s access to market information, (ii) the proposal fails to provide a thorough economic analysis of the proposed amendments and overestimates the compliance costs of the current filing requirement; and (iii) there is uncertainty as to whether the SEC has the authority to increase the reporting threshold, suggesting that the text of Section 13(f) gives the SEC the authority to lower the threshold but not to increase it.

- [See a copy of the Release](#)
- [See a copy of Commissioner Lee’s statement](#)

Industry Update

SEC Issues Supplemental Guidance Concerning Proxy Voting Responsibilities of Investment Advisers

On July 22, 2020, the SEC issued a release with guidance that supplements its prior guidance regarding the proxy voting responsibilities of investment advisers under the Investment Advisers Act of 1940, as amended (“**Advisers Act**”). The SEC published this guidance in conjunction with amendments to the rules governing proxy solicitations under the Exchange Act, which were also referenced in the release. The SEC expects that the amendments will improve the “mix of information that is available to investors” by providing issuers with access to proxy advisory firm recommendations within a timeframe in which such issuers can provide shareholders with additional information that may be material to a voting decision. As such, the guidance is meant to supplement the prior guidance to assist investment advisers in how to consider this additional information in light of their proxy voting responsibilities. Davis Polk has published a [Client Alert](#) discussing the guidance.

- [See a copy of guidance](#)

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