Securities Regulation Daily Wrap Up, INVESTMENT ADVISERS—Rulemaking Petition Seeks Shorter Period for Reporting Form 13F Holdings, (Feb. 8, 2013)

Securities Regulation Daily Wrap Up

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By Jacquelyn Lumb

NYSE Euronext, the Society of Corporate Secretaries and Governance Professionals, and the National Investor Relations Institute have submitted a rulemaking petition to the SEC seeking an amendment that would shorten the reporting deadline for reporting under Exchange Act Section 13(f). The current reporting deadline has existed for over 30 years and does not reflect advancements in technology, recordkeeping, and reporting systems, according to the group. The delay in reporting keeps material information from reaching investors and public companies on a timely basis.

Current reporting requirements. Institutional investment managers that exercise investment discretion over accounts holding a fair market value of at least $100 million on the last trading day of any month must file a report on Form 13F. The reports must be filed within 45 days of the last day of each calendar quarter and managers may request extensions beyond that period. The petitioners noted that a manager that makes an investment on January 1 is not required to report that holding until May 15. Reporting delays have repercussions for investors and public companies, they explained.

Investors have no way of knowing whether the information reported on Form 13F remains current. Public companies are unable to identify shareholders in a timely manner, which hampers their ability to engage with shareholders. The petitioners said their concerns are increasingly urgent given the growth in assets held by institutional investors since the adoption of Form 13F. They reported that institutional ownership has grown to over 50 percent of outstanding U.S. equities. Institutional investors often have shorter-term investment horizons than individual investors, the petitioners explained.

Managers may structure their acquisitions around the filing deadlines to avoid the disclosure requirement for a longer period of time. This delay harms investors who trade without the benefit of knowing the size and scope of institutional holdings, which erodes price discovery, market transparency, and ultimately, investor confidence, in petitioners' view.

Trend toward quicker reporting. Given the original objectives of Section 13(f) reporting, petitioners said that reporting deadlines should be similar to those for Forms 4, 13D, and 13G to make them more uniform and to avoid an unfair advantage by managers over other investors. The trend at the SEC has been moving toward much shorter reporting periods due to improvements in information technology, they noted. Even the 10-day reporting period under Section 13(d) has been roundly criticized by many in today's markets. Rule 13f-1 should be revised to reflect the expectation that material information will be promptly and widely disseminated.

Some managers have argued that the delay is necessary to prevent tipping their hand to the market and driving the price of the security up or down, which could affect their investment strategies. In petitioners' view, this argument supports concerns that the filing delay works to the advantage of managers at the cost of investors.

Petitioners also suggested that issuers are at risk of engaging the wrong shareholders due to outdated information. The reporting delay inhibits effective communications between a public company and its shareholders.

Two days after end of quarter. Petitioners suggested a two business day reporting period after the end of each calendar quarter. They believe this timetable is feasible and in the public interest, but agree that a final decision should be based on comments of market participants and the public. Petitioners urged the SEC to raise this issue with the appropriate Congressional oversight committee where consideration could be given to requiring no later than monthly reporting of long positions, similar to the reporting for short sale positions.

Filings under Regulation 13D-G fall outside the scope of the petition, but the group offered its strong support of a rulemaking project on the Section 13 beneficial ownership reporting rules. Former SEC Chairman Mary Schapiro supported an update to these rules to reflect modern investment strategies and innovative financial products, they advised.

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