INVESTMENT ADVISER
ASSOCIATION

August 14, 2013

Via Electronic Filing

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Request for rulemaking concerning amendment of beneficial ownership reporting rules under Section 13(f) of the Securities Exchange Act of 1934 in order to shorten the reporting deadline under paragraph (a)(1) of Rule 13f-1; File No. 4-659

Dear Ms. Murphy:

The Investment Adviser Association[1] appreciates the opportunity to submit comments on the rulemaking petition requested by NYSE Euronext, the Society of Corporate Secretaries and Governance Professionals, and the National Investor Relations Institute (the "**Petition**").[2] The petitioners request that the Securities and Exchange Commission (the "**Commission**") undertake proposed rulemaking to amend the beneficial ownership reporting rules under Section 13(f)(1) of the Securities Exchange Act of 1934 (the "**Exchange Act**") in order to shorten the reporting deadline under paragraph (a)(1) of Rule 13f-1 from 45 days after the last day of each calendar quarter to two business days after the last day of each calendar quarter.

We strongly oppose the Petition. The petitioners' proposed deadline for filing Form 13F would have a significant adverse effect on SEC-registered investment advisers and their clients from both a trading strategy and an operational perspective. Further, the petitioners have not articulated a compelling public benefit that would justify the imposition of the costs involved.

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[1] The Investment Adviser Association ("IAA") is a not-for-profit association that represents the interests of investment adviser firms that are registered with the Commission. Founded in 1937, the IAA's membership consists of more than 500 firms that collectively manage in excess of $11 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

[2] *See Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934*, File No. 4-659 (Feb. 4, 2013), available at http://www.sec.gov/rules/petitions/2013/petn4-659.pdf.

1050 17th Street N.W. · Suite 725 · Washington, DC 20036-5503 · (202) 293-4222 ph · (202) 293-4223 fx · www.investmentadviser.org

We believe that the current 45-day lag, on a quarterly basis, appropriately balances the policy reasons for disclosure with allowing sensitive holdings information to become somewhat stale in order to protect investment advisers and their clients from predatory trading practices. Advances in technology should not change the still-valid policy reasons for having a lag in disclosure of the information.

In determining whether to act on the Petition, we request that the Commission consider: (1) the potential unintended consequences of increased free-riding and front running; (2) operational challenges in complying with the requested changes; (3) alternative methods that are available to issuers to determine the identity of their larger institutional investors; (4) the unique nature of Form 13F holdings information in contrast to other types of disclosures; and (5) whether Form 13F is still warranted from a policy standpoint.

Protecting the Confidentiality of Institutional Investment Managers' Trading Strategies—Free-Riding and Front Running

Granting the petitioners' request would harm investment advisers and their clients in two important ways, by enabling increased free-riding and front running.

Reports on Form 13F are publicly available via EDGAR. We are concerned that shortening the filing deadline could exacerbate free-riding. If current holdings information becomes available, other investors could capitalize on investment managers' investment ideas by "cherry picking" in near-real time the best ideas from the best-performing firms, or by replicating the trading strategies of high-performing managers without paying any fee. This free-riding (indeed, freeloading) would misappropriate managers' intellectual capital and investment decision-making. This ability would benefit the free-riders at the expense of the investment advisory firms that devote extensive resources to researching investments and their clients that have paid for the benefit of the advisers' expertise.

We are also concerned that disclosing the holdings information required by Form 13F too soon after quarter-end could reveal institutional investment managers' proprietary trading strategies and trades that are in progress, thereby enabling front running.[3] Front running is typically done by short-term traders at the expense of long-term investors. The danger of front running is especially acute while investment managers are in the process of building or reducing a position. A short reporting deadline, and the resulting front running risk, would be particularly harmful to investment advisory firms that tend to have low turnover of investments or have concentrated portfolios (relatively few holdings).[4] Front running would

[3] Front running can refer to trading for one's own account ahead of trading for clients' accounts in order to take advantage of advance knowledge of clients' pending trade orders that are expected to affect the price of the security. We use the term here to mean trading ahead of another investment manager in order to take advantage of advance knowledge (gathered from Form 13F reports) of the other investment manager's trading strategies.

[4] Similarly, a more frequent (*e.g.*, monthly) reporting requirement would harm investment advisers and their clients. In the case of an investment manager holding numerous options that are Section 13(f) securities, a more

harm investment advisers' clients and the shareholders and investors in the funds that they manage. Investment managers often trade "across the board,"[5] so disclosure of information on Form 13F would compromise all types of client and investor strategies, including institutional and individual clients, registered investment companies, private funds, and other collective investment vehicles.

Although a manager can submit a request for confidential treatment, that is a resource-intensive process for both the manager and the Commission's staff. If the time period is shortened, the Commission should expect the volume of requests for confidential treatment to increase drastically, perhaps by thousands each quarter, burdening the Commission's staff and taxing Commission resources which could be put to better use.

The petitioners assume that earlier disclosure of institutional investor holdings would be highly beneficial to other investors without clearly articulating these benefits or how they outweigh the potential harm of earlier disclosure to investors that invest through institutional investment managers. We urge the Commission to consider carefully the potential negative unintended consequences of increased free-riding and front running when reviewing the Petition.

Operational Issues

We disagree with the petitioners' rationale that technological advances support reducing the delay period. Despite advances in technology, the filing process still has numerous operational components that take time to complete. From a logistical perspective, if the reporting deadline for Form 13F were shortened to two business days after quarter-end, many investment advisers would be unable to comply in practice. Some trades that are made on the last day of a calendar quarter are not even cleared within two business days. Also, their clients' assets may be held with dozens of custodians. Much, but not all, securities holdings data is automated and reconciled daily. However, it still takes at least a few business days to achieve final, reconciled accounts at the end of each calendar quarter. Form 13F reporting cannot be accomplished with a mere push of a button; rather, some processing is required.

Also, the complexity of the investment management industry has greatly increased over time. Many investment advisers reside within larger financial services organizations. Those organizations need considerable time to consolidate and reconcile the data. For example, different managers, including investment advisers, within the same organization

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frequent reporting requirement would not only require disclosing many more reportable securities, but also would more critically expose the investment manager's trading strategy.

[5] Trading across the board refers to trading the same security simultaneously for a variety of different client accounts.

may hold the same securities but allocate different valuations to them. It takes time to identify and resolve these differences.[6]

For investment advisory firms that conduct operations internationally, filing Form 13F within two business days would be virtually impossible in practice. The delay necessitated by different time zones is a reason why securities transactions must be settled within three business days (T+3) and not sooner.

For example, an investment advisory firm's reporting process could involve the following steps:

1. Download and convert the Official List of Section 13(f) Securities from pdf to Excel, which is not typically available until after the end of the quarter.
2. Receive spreadsheets from multiple affiliates (after the affiliates have performed their own verification), including managers located in Europe and Asia. The time zone difference makes same-day responses virtually impossible.
3. Work with database engineer to consolidate spreadsheets received from multiple affiliates into one report.
4. Review consolidated holdings report for errors and discrepancies; follow up with database engineer and affiliates (in various time zones) as necessary to correct issues. For example, some transactions may fail to settle or there may be delivery failures.
5. Prepare Form 13F-HR and notice filings, and obtain review by outside counsel when necessary.
6. Send filings to printer for "Edgarization."
7. Review printer proof and make corrections if necessary.
8. Obtain signatures (from signatories located in various time zones and various continents) on holdings report and notice filings.
9. Correct any errors identified by investment adviser or its affiliates.
10. Instruct printer to make filing.

In addition, the Commission should consider the balance of investment advisers' competing priorities. During the days and weeks immediately following the end of a calendar quarter, investment advisers must devote significant compliance and administrative resources to client reporting, performance verification, and regulatory reporting, among other tasks. A significantly shortened reporting deadline for Form 13F would be seriously disruptive to investment advisory firms' other mandated and business-critical processes.

For these reasons, a two-business-day reporting deadline would be unreasonable for investment advisory firms to comply with from an operational perspective.

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[6] If the manager has even one affiliate that is not on a common investment reporting platform or is not located in the United States, it would not be feasible to complete the process within two business days.

Issuers Have Alternative Ways to Determine the Identity of their Larger Institutional Investors

One of the petitioners' arguments is:

> For public companies, the 45-day delay period impedes their ability to identify shareholders in a timely manner. This is particularly important for the first quarter of the year because Form 13F is not due until May 15, after most companies have completed their annual proxy process; but companies with a fiscal year ending on a date other than December 31 are also impacted because they, like all public companies, have ongoing needs to communicate with their shareholder base. As a result, the 45-day delay period hampers public companies' ability to identify and engage with their shareholders, including their ability to consult with shareholders regarding "say on pay," proxy access and other key corporate governance issues.

The petitioners' argument that a substantial reduction in the 45-day delay period would align Rule 13f-1 with public company governance best practices is inconsistent with the actual resources of issuers and the legislative history of Section 13(f). Congress's objectives in establishing the reporting system required by Section 13(f) were to: (1) improve the body of factual data available 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 (2) establish uniform reporting standards and a uniform centralized data base,[7] not to help individual issuers identify and communicate with their shareholders—there is a separate regulatory regime for those disclosures.[8]

In addition, issuers have a variety of ways to identify their investors. Investors generally must file Schedule 13D if they beneficially own more than 5% of a registered class of the issuer's equity securities, or are engaged in certain takeover activities, within 10 days after the acquisition. Certain investors, including SEC-registered investment advisers, may file Schedule 13G in lieu of Schedule 13D within 45 days of the end of the calendar year in which the investment adviser beneficially owns more than 5% of a registered class of equity securities, and within 10 days of the end of any month in which the beneficial ownership first exceeds 10%.

In addition to public holdings reporting, including reports on Form 13F and statements on Schedules 13D and 13G, when preparing for the annual meeting, the issuer's transfer agent compiles a list of the issuers' beneficial owners and registered owners. Furthermore, there are service providers that, for a fee, identify which institutional investors have traded an issuer's

[7] *Filing and Reporting Requirements Relating to Institutional Investment Managers*, Release No. 34–14852 (Jun. 15, 1978).

[8] *See* Section 14 of the Securities Exchange Act of 1934.

stock within days. Moreover, the petitioners' argument ignores the realities of issuers' relationships with their institutional investors. Many institutional investors regularly attend issuers' earnings calls and communicate with management. We therefore respectfully disagree with the petitioners' statement that the 45-day delay hampers issuers' ability to identify and engage with their shareholders, at least when referring to institutional investment managers that own a material portion of the issuer's securities.

Comparison to Filing Deadlines for Other Disclosures is Faulty

The petitioners compare the Form 13F filing deadline with filing deadlines for other disclosures such as Schedules 13D and 13G, Form 4, Form 8-K, and Regulation FD, as well as short sale activity reports. Disclosure of material events involving individual stocks or specific events are very different requirements, and are based on completely different policy reasons, than reporting the entirety of an institutional investment manager's (and its global affiliates') Section 13(f) securities holdings every quarter.

Reconsider Whether Form 13F Still Makes Sense

According to the Commission's Office of Inspector General's Office of Audits' Review of the Commission's Section 13(f) Reporting Requirements (Report No. 480, Sept. 27, 2010) (the "**OIG Report**"), the legislative intent of Section 13(f) was to increase investor confidence in the integrity of the U.S. securities markets and for the Commission to make extensive use of the institutional disclosure data in fulfilling their responsibilities to protect the public interest.[9] However, the OIG Report found that "no SEC division or office conducts any regular or systematic review of the data filed on Form 13F" and that "no SEC division or office has been delegated authority to review and analyze the 13F reports, and no division or office considers this task as falling under its official responsibility."[10]

We are aware that as a result of the OIG Report, the Commission's Division of Investment Management has implemented computer-based reviews of Form 13F filings, which are now required to be in XML format, in order to detect irregularities. However, because the original policy reasons behind Section 13(f) are outdated, and the Commission is not making significant use of the data, we respectfully suggest that the Commission take this opportunity to reconsider whether Form 13F is still needed from a policy perspective.[11]

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[9] OIG Report at iv.

[10] OIG Report at vi.

[11] Curiously, we are not aware of any other countries adopting a reporting obligation that is equivalent to Form 13F. Typically, other countries have disclosure requirements that are related to crossing certain thresholds of ownership or a takeover of control. The ownership thresholds and required timing for submitting the disclosures vary by country but, to our knowledge, the type of overall "institutional investment manager" reporting required in the United States is not typically required by other countries.

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We appreciate the Commission's consideration of our comments on the Petition requesting that the Commission amend the beneficial ownership reporting rules under Section 13(f)(1) of the Exchange Act in order to shorten the reporting deadline under paragraph (a)(1) of Rule 13f-1. Please do not hesitate to contact the undersigned if the Commission or its staff has any questions or if we may provide any additional information regarding these matters.

Respectfully submitted,

/s/ Laura L. Grossman

Laura L. Grossman
Assistant General Counsel

cc: The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner

Mr. Keith F. Higgins, Director, Division of Corporation Finance
Mr. Norm Champ, Director, Division of Investment Management
Mr. John Ramsay, Acting Director, Division of Trading and Markets