

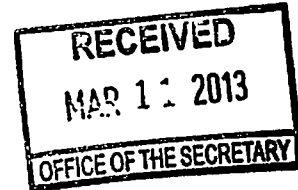


**National Fuel**

**Paula M. Ciprich**  
*General Counsel and Secretary*

February 28, 2013

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



**Re: File No. 4-659**  
**Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934**

Dear Ms. Murphy:

National Fuel Gas Company (“National Fuel” or “we”) appreciates the opportunity to comment on the petition for rulemaking (“the NYSE Petition”) filed by NYSE Euronext, the Society of Corporate Secretaries and Governance Professionals and the National Investor Relations Institute (collectively, the “Petitioners”) on February 1, 2013.<sup>1</sup> By way of background, National Fuel was incorporated in 1902 and is a publicly traded diversified energy company listed on the New York Stock Exchange (NYSE).

The purpose of this letter is to articulate National Fuel’s support for the above-referenced Petition regarding the modernization of reporting rules under Section 13 of the Securities Exchange Act of 1934 (“Exchange Act”). In particular, we urge the U.S. Securities and Exchange Commission (the “Commission”) to: (1) shorten the reporting deadline for large, institutional investors under Section 13(f) of the Exchange Act<sup>2</sup> (“Section 13(f”); (2) shorten the “ten day window” for filing Schedule 13D forms; and (3) adopt a more expansive definition of “beneficial ownership” as that term is used throughout Section 13(d) of the Exchange Act (“Section 13(d”) and the regulations implementing that statute.

### **Shortening Deadlines under Section 13(f) of the Exchange Act**

Currently, every institutional manager (“Manager”) overseeing at least \$100 million of “Section 13(f) securities” on the last trading day of any month must report those holdings in a

<sup>1</sup> See Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934, submitted by NYSE Euronext, Society of Corporate Secretaries and Governance Professionals, and the National Investor Relations Institute, File No. 4-659 (Feb. 1, 2013) (hereinafter “NYSE petition”), available at <http://www.sec.gov/rules/petitions/2013/pctn4-659.pdf>.

<sup>2</sup> Specifically, we recommend shortening the reporting deadline under Rule 13f-1(a)(1).

Form 13F filing within 45 days after the last day of each calendar quarter. The Petition seeks to shorten this deadline to two days. We support the Petitioners for urging the Commission to undergo the rulemaking process regarding this issue because we believe that shortening the delay period under Section 13(f) would be beneficial to the operation of transparent markets without any significant disadvantages or burdens.

As the NYSE Petition notes, when the Commission adopted rules requiring the EDGAR filing of Form 13F in 1999, the Commission recognized that “investors would find the information contained in Form 13F filings useful in tracking institutional investor holdings in their investments and . . . issuers . . . would find detail as to institutional investor holdings useful because much of their shareholder list may reflect holdings in ‘street name’ rather than beneficial ownership.”<sup>3</sup> The Petition also points out that a core purpose of Section 13(f), according to its legislative history, is to encourage “rapid dissemination of . . . institutional disclosure information to the public.”<sup>4</sup> It cannot reasonably be disputed that prompt market transparency is valuable to both investors and publicly traded companies.

Moreover, in an era of high-frequency trading, highly sophisticated computer algorithms and other tools, and advanced recordkeeping technology, the idea that sophisticated Managers actually need 45 days to make their required disclosures under Section 13(f) is laughable. This is especially so in light of the Commission’s current requirements that publicly traded companies must file form 8-K Current Reports within four business days of a reportable event, and directors and officers must file Form 4 within two business days after a reportable event. Hence, we agree with the Petitioners’ assertion that the length of the 45-day delay period is “unnecessarily long” and “runs contrary to the interests of investors and public companies.” More specifically, we strongly support the following points, among others, made in the Petition:

- Form 13F for the period ended March 31 is not due until May 15, after most public companies have completed their annual proxy solicitation process. The current 45-day delay period thus impedes companies from identifying shareholders in a timely manner and meaningfully engaging their shareholders on key corporate governance issues in time to affect the annual meeting of shareholders.
- The current delay period fosters an environment where Managers may structure acquisitions and dispositions around filing deadlines and voting record dates so as to ambush publicly traded companies at their annual meetings. Data in a Form 13F may become stale, essentially reducing the quality of information available on the market, and a Manager can invisibly acquire a substantial number of shares starting on the first day of a quarter and before the annual meeting voting record date. This lack of transparency gives Managers a substantial advantage in the competition for shareholder votes over directors, say-on-pay and other proposals on the annual meeting ballot.

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<sup>3</sup> NYSE petition; *see also* Rulemaking For Edgar System, Exchange Act Release No. 40934, 1999 WL 8161, 3 (Jan. 12, 1999) (hereinafter “EDGAR Adopting Release”).

<sup>4</sup> EDGAR Adopting Release at 3.

- While a 45-day delay period may have been necessary as a practical matter when Rule 13(f) was originally adopted by the Commission (more than 30 years ago), those practical considerations have been rendered obsolete by significant advances in information technology.
- The argument that requiring Managers to disclose their holdings more quickly would tip their hand to the market, potentially driving the price of a particular security up or down and hampering their investment strategy, is unpersuasive. Instead, such an argument supports the notion that the 45-day delay period works to the advantage of Managers who wish to accumulate shares on a stealth basis to the detriment of other investors.
- The benefits to investors and public companies of timely long-position reporting justify a substantial reduction in the Form 13F reporting period similar to that required for short-sale reporting under the Dodd-Frank Act.
- At a time where public companies, in an effort to deal with the demands of the Dodd-Frank Act and proxy advisory firms, are looking for effective ways to reach their shareholders, the 45-day delay period hinders the goal of effective communications because companies find it difficult to correspond with shareholders when their identities are hidden by outdated reporting requirements.

As a public company, we take very seriously the need for effective communication with our shareholders, both to understand their views and to enable us to convey our beliefs regarding what courses of action are important to our company and our shareholders. In today's world of ever-faster turnover of institutional positions, it is more important than ever that we have more current information regarding the identity of our institutional shareholders.

For the reasons set forth above, we support the Petitioners' proposal to amend the reporting period for Managers and recommend that the reporting deadline for filing Form 13F with the Commission be shortened to two business days after the end of the calendar quarter.

### **Shortening the Ten-day Window when Reporting Threshold is Crossed and Expanding the Definition of "Beneficial Ownership" under Section 13(d)**

While the NYSE Petition did not specifically address filings under Section 13(d) in depth, the Petitioners noted their strong support for a broader rulemaking project concerning the beneficial ownership rules of Section 13 to ensure that the rules are "up-to-date 'in light of modern investment strategies and innovative financial products.'"<sup>5</sup> We therefore believe that, in order to fully plug the loopholes created by the current reporting framework, the market needs amendments that would shorten the reporting deadline when the 5% disclosure threshold is crossed and expand the definition of "beneficial ownership" to include alternative ownership mechanisms.

<sup>5</sup> NYSE petition (quoting "Remarks at the Transatlantic Corporate Governance Dialogue" by Chairman Mary L. Schapiro (12/15/2011)), available at <http://www.sec.gov/news/speech/2011/spch121511mls.htm>.

Accordingly, we also support the proposals made by the law firm Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”) in its petition for rulemaking dated March 7, 2011 regarding the beneficial ownership reporting rules.<sup>6</sup> In particular, we recommend that the SEC (1) require that initial Schedule 13D filings be made within one business day following the crossing of the 5% ownership threshold, and (2) adopt a broad definition of “beneficial ownership” that encompasses ownership of any derivative instrument which includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject security.

The current ten-day filing window for Schedule 13D is inadequate in the context of the Commission’s disclosure regime that champions transparency and fair markets. As noted by the Commission’s Release No. 34-64087; File No. S7-10-11 (the “Beneficial Ownership Release”), the purpose of the beneficial ownership rules is to “help investors make fully informed investment decisions with respect to their securities” and to “provide management of issuer with information to ‘appropriately protect the interests of its security holders.’”<sup>7</sup> While the ten-day window may have been reasonable at the enactment of the Williams Act in 1968 (45 years ago), ten days is clearly excessive with the advent of significant technological advances. The type of investor that acquires a 5% stake in a publicly traded company clearly has the sophistication and resources to submit the required filing promptly under a much shorter reporting deadline of no more than two business days.

Furthermore, the current overly narrow definition of “beneficial ownership” fails to adequately address many ways in which modern investors may acquire effective control of a security. As Wachtell Lipton points out in its Comment to the SEC regarding the Beneficial Ownership Release, the example of security-based swaps highlights how investors are able to acquire any or all of the characteristics of direct stock ownership without “triggering disclosure requirements through the use of inventive derivative structures.”<sup>8</sup> Because sophisticated investors are able to exploit the gaps in the current disclosure requirements, aggressive investors are essentially armed with loopholes that facilitate market manipulation and undermine the intended purpose of the Section 13(d) reporting rules.

National Fuel strongly agrees with the Petitioners’ support for a broader rulemaking project. More specifically, we believe that the outdated ten-day 13D reporting window should be

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<sup>6</sup> See Petition for Rulemaking Under Section 13 of the Securities Exchange Act of 1934, submitted by Wachtell, Lipton, Rosen & Katz, File No. 4-624 (Mar. 7, 2011), available at <http://www.sec.gov/rules/petitions/2011/petn4-624.pdf>.

<sup>7</sup> Beneficial Ownership Reporting Requirements And Security-Based Swaps, Exchange Act Release No. 64087, 2011 WL 933460, 4 (Mar. 17, 2011); see also *Wellman v. Dickinson*, 682 F.2d 355, 365-66 (2d Cir. 1982) (noting that Section 13(d) was designed to “alert investors in securities markets to potential changes in corporate control and to provide them with an opportunity to evaluate the effect of these potential changes”).

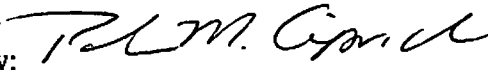
<sup>8</sup> See Comment Letter to SEC, submitted by Wachtell Lipton (Apr. 15, 2011), available at <http://www.sec.gov/comments/s7-10-11/s71011-2.pdf>.

shortened and the current definition of “beneficial ownership” should be expanded to keep pace with market realities and abuses.

Thank you for the opportunity to comment on the NYSE Petition. If you would like to discuss anything in this letter or have any questions, please do not hesitate to contact me.

Sincerely,

NATIONAL FUEL GAS COMPANY

By:   
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Paula M. Ciprich  
General Counsel and Secretary