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

March 26, 2013

Re: NYSE Petition for Rulemaking under Section 13(f) of the Securities Exchange Act of 1934; File No. 4-659; "Petition"

Dear Ms. Murphy,

The Security Traders Association, "STA" welcomes the opportunity to comment on NYSE Petition for Rulemaking under Section 13(f) of the Securities Exchange Act of 1934; File No. 4-659; "Petition". The STA is an organization comprised of individuals who are involved in the trading of financial securities. Our members represent many of the business models in the financial services sector, including full and discount service broker dealers, agency only broker dealers, asset managers, exchanges and ATS's. Because of the diversity within our membership we are uniquely qualified to provide insight and comments on the Petition. The STA uses a Committee structure to vet issues amongst its various constituencies to create bottom-up consensus. With regard to the Petition, the STA relied mostly on input we received from our Institutional Advisory Committee and Institutional Committee, which are comprised of representatives from the trading desks of institutional asset managers. These members carry the fiduciary responsibilities of best execution on behalf of their investors.

Over the course of our 75 year history the STA has compiled a list of principles of rule-making which we consult to insure our opinions are consistent. We feel two of those principles guide our opinions regarding the Petition.

- First, and foremost, regulation should do no harm.
- The use of empirical data should be required in any rulemaking process.

This letter was written in context to these principles which we believe have withstood the test of time.

**Executive Summary**

On February 1, 2013, NYSE Euronext and two trade associations; the Society of Corporate Secretaries and Governance Professionals, and the National Investor Relations Institute, "Petitioners" filed a "petition for rulemaking" in support of shortening the reporting time on 13(f) filings from 45 days to 2 days. Form 13F filings disclose long positions by all managers with AUM over \$100 million, are filed on a quarterly basis, and are made a matter of public record. In their filing, the aforementioned parties, state there are benefits which would accrue to investors and public companies with a shorter deadline on 13(f) filings.

The Petitioners state:

***“The Length of the Current 45-Day Delay Period Keeps Material Information From Reaching Investors and Public Companies on a Timely Basis.***

*This delay has a number of adverse consequences for investors and public companies. Investors are denied the ability to “track[] institutional investor holdings in their investments,”<sup>12</sup> because by the time the reporting deadline occurs, the investor would have no way of knowing whether the information reported in the Form 13F remains current. 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.”<sup>1</sup>*

The aforementioned parties state that it was the original intent of the SEC, thirty years ago when Rule 13(f) was originally approved, to have a shorter deadline than the existing 45 days, but due to technological limitations ultimately determined a longer deadline was more practical.

**Managers, Institutional Investors, Individual Investors and Hedge Funds**

Individual investors today have multiple vehicles available to them to make investment decisions and trade on those decisions. In the Petition, terms and distinctions are made regarding types of investors. These terms and distinctions include: managers; institutional investors; individual investors; and hedge funds. We note that all of these aforementioned terms describe investment vehicles where the end users are all individual investors. Therefore, distinctions between these terms should focus on the investment vehicle and whether the end user – the individual investor – is being provided protection and transparency into how the vehicle functions with regards to costs, benefits and level of information. To draw distinctions that each vehicle represents a unique type of individual investor is not accurate.

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<sup>1</sup> NYSE Euronext letter to Ms. Elizabeth M. Murphy, dated February 1, 2013, page 3.



## **STA's General Statements and Views**

- STA respects the corporate governance issues raised in the petition.
- STA acknowledges certain benefits may accrue to investors when they engage the market in a self-directed vehicle today with information from Form 13F filings.
- We agree that the original reason the Commission cited in 1978 for providing a longer than preferred deadline of 45 days is no longer valid.
- The technological capabilities in filing Form 13F should not be the sole determining factor in deciding its deadline.
- We disagree with the suggestion that there is a correlation between a shorter deadline and investor confidence.
- We feel a shorter deadline could result in negative consequences for those individual investors who rely on institutional managers required to file Form 13(f)

### **STA respects the corporate governance issues raised in the petition.**

We respect that the 45 day deadline may hamper public companies' ability to communicate with their shareholders. However, the importance of certain communications to, and responses from, shareholders vary with the circumstances surrounding those communications. The deadline for Rule 13(f) filings should not be determined solely by those communications identified in the Petition as "particularly important"<sup>2</sup>. Therefore, in order to weigh the importance of the communications to shareholders with the sensitivity of releasing information from 13(f) filings into the public domain, we ask for specific examples of communications and the reasonable deadline requirement in order to satisfy the corporate governance burden.

### **STA acknowledges certain benefits may accrue to investors who transact using a self-directed vehicle with information from 13(f) filings.**

There are certain benefits to investors who transact using a self-directed vehicle with information afforded them from 13(f) filings. We define "self-directed vehicle" as a product used by an investor who chooses to make their own investment decision absent any advisor and executes that investment directly without the use of an advisor or manager. An example would be an online discount or full service brokerage account.

An individual investor who chooses to use such vehicles may determine there is a benefit in knowing that professional managers with robust research and investment models are shareholders in a company in which the individual investor is considering investing in. Furthermore, an individual investor may wish to track a manager's holdings in that company,

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<sup>2</sup> NYSE Euronext letter to Ms. Elizabeth M. Murphy, dated February 1, 2013, page 3.



which could contribute to overall confidence and be a contributing factor in investment and liquidation decisions for that individual investor. However, there is a distinction between rules which provide investors a benefit versus rules which provide investors protection. At times rules provide certain benefits to investors and do not necessarily serve an investor protection requirement. Such situations are usually the result of a rule that once served an investor protection issue, which over time no longer exists due to changes in the regulatory or competitive forces within the marketplace. We therefore respectfully ask whether it is the intent of the Petition to provide an additional benefit to investors or to afford them a protection they are not receiving today. If it is the latter, what do investors need protection from and how will a shorter deadline fulfill that requirement?

**We agree that the original reason the Commission cited for providing a deadline of 45 days is no longer valid.**

In its final rule on Form 13F the Commission explained its decision to extend the deadline from 30 days to 45 days was the result of comments it received that the 30 day period created undue burden. In other words, the technological capabilities within the industry at the time of the final rule prevented a 30 day deadline. This decision was made in 1978. We agree that there has been much progress on the industry's technological capabilities since then, and there has been much change on the regulatory infrastructure since this same time to provide investors with protections not afforded them in 1978. In particular, Regulation FD, adopted on August 15, 2000, addressed selective disclosure of information by publicly traded companies and other issuers:

Regulation FD provides that when an issuer discloses material nonpublic information to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information. In this way, the new rule aims to promote the full and fair disclosure.<sup>3</sup>

Therefore, it seems rationale that if comments made in 1978 which supported a longer 45 day deadline are no longer valid in today's discussion on the deadline requirements for Form 13F then comments made in favor of a shorter, 30 day deadline, also made in 1978, may also no longer be valid.

**The technological capabilities in filing Form 13F should not be the sole determining factor in deciding deadlines. Rather, it should be just one variable in the decision process.**

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<sup>3</sup> U.S. Securities and Exchange Commission <http://www.sec.gov/answers/regfd.htm>



The technological capabilities and burden should only be one variable in the decision making process on any new rule decision. Other variables need to be considered in order to assure that individual investors are protected in any investment vehicle they use.

Regarding the Petition, taken to the extreme, if the capability to file Form 13F were available in real time, would it be released into the public domain in real time? We strongly believe that the technological capabilities of the industry are only one variable to be considered in any decisions made regarding deadlines.

**We disagree with the suggestion that there is any correlation between a shorter deadline and improving investor confidence.**

We strongly disagree with any claims that shortening the deadline will improve investor confidence and respectfully ask that such claims be supported with data which illustrates that decisions to invest or not invest were negatively impacted by the current 45 day deadline. Since we do not think there is a correlation between a shorter deadline and improving investor confidence, we strongly urge that any debates or requests to shorten this deadline be limited to the corporate governance issues raised in the Petition and the potential negative consequences that may result. This is not an individual investor confidence issue and statements made to this regard should provide empirical data suggesting otherwise.

**We feel a shorter deadline could result in negative consequences for those individual investors who rely on institutional managers required to file Form 13(f)**

Given the increased percentage of individual investors who have their investments managed by managers (as noted in the Petition<sup>4</sup>), entry and exit strategies by managers need to be carefully executed in order to minimize volatility and maintain investor confidence.

We therefore ask if there is a benefit to individual investors regardless of which investment vehicle is used from releasing information on investment decisions (that often involve large positions) made by managers on behalf of individual investors.

The need for information has always been at a premium and today's market is no different. The desire for market information, whether it is depth of book or institutional block crosses, has only increased. The interaction of the hyper-fast execution space coupled with the incessant need for more data has created a highly technological marketplace that at times is predatory between participants. If this petition is implemented, it could exacerbate the detrimental aspects of the

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<sup>4</sup> NYSE Euronext letter to Ms. Elizabeth M. Murphy, dated February 1, 2013, page 3 & 4.



speed/data interaction and harm the very same individual investor confidence it is seeking to improve. The more illiquid stocks are the most impacted because of the time needed to establish or trade around large positions of the institutions.

Furthermore, a shorter deadline brings no additional benefit or protection to those individual investors whose managers are **not** involved in activity being reported because such managers require more due diligence than the decision making of their contemporaries in their investment and liquidation decisions. Institutional Manager “A” does not make an investment or liquidation decision based on the investment or liquidation decisions made by Institutional Manager “B”.

The impact on individual investors when they use a self-directed vehicle should be considered, including whether their decisions to buy, sell or hold will be better informed if changing the rule. While such a change may provide some benefit, several questions should be addressed. For example, to what degree does a self-directed vehicle provide individual investors the ability to interpret this information for their benefit or protection? Will there be other individual investor investment vehicles with robust data mining capabilities on time and sales information that can align the information in the Rule 13(f) filings with activity in the market place?

The apparent answer to this question is that it is only investment vehicles which are highly proprietary in nature and not available to individual investors who will benefit from this information being released with a shorter deadline. And the perception at this time is so strong it is likely that investment managers will change their investment and liquidation decisions in order to continue protecting their individual investors. Any change in their behavior will undoubtedly result in changes in the information available in 13(f) filings.

We therefore ask for data which demonstrates changes in the quality of information provided today using the current 45 day deadline versus that which may result in a shorter deadline of two days. Such data would be useful in determining if individual investors receive greater or inferior benefits and protections with a shorter deadline, or if their interests are better served with the existing 45 day deadline.

The potential negative aspects of this proposal seem to affect the vast majority of the vehicles used by individual investors to execute their investment decisions. Managers cannot operate in the best interests of individual investors because the short term proprietary investment vehicles may be privy to the intellectual capital and investment decision making of such managers. Furthermore, it is unreasonable to expect that self-directed vehicles will provide the data mining capability that proprietary vehicles, with short term trading strategies not available to individual investors, have.



**We oppose shortening the deadline on filing Forms 13F and recommend the Commission not move forward with formal rule making.**

The investment process is based on a myriad of variables such as the fundamental valuation of a company, its competitive landscape, management and price. The information provided in Form 13F is just one variable in the investment process and shortening the deadline will not improve the benefits nor provide additional protection to investors.

We oppose shortening the deadline on filing Form 13F and recommend the Commission not move forward with formal rulemaking based on the Petition.

Thank you,

A handwritten signature in black ink that reads 'Tom M Carter'.

Tom Carter  
Chairman of the Board

A handwritten signature in black ink that reads 'James Toes'.

James Toes  
President & CEO

Cc:

- SEC Chairman Elisse Walter
- SEC Commissioner Troy Paredes
- SEC Commissioner Luis Aguilar
- SEC Commissioner Dan Gallagher
- SEC Director of Trading & Markets, John Ramsey
- SEC Deputy Director of Trading & Markets, Jim Burns