

Special Counsel in the Office of Rulemaking  
Division of Corporation Finance  
Attn: Angie Kim  
100 F Street, NE  
Washington, DC 20549

Ms. Kim,

The SEC released Concept Release: Business and Financial Disclosure Required by Regulation S-K, File No. S7-06-16 in 2016 and asked for public feedback. I submitted the attached comment which you can also find online here:

<https://www.sec.gov/comments/s7-06-16/s70616-12.htm>. Please review my comment. You will see my focus is on the SEC protecting all shareholders. Right now the SEC is not protecting shareholders whose shares are held in street name which is most shareholders. I have not heard back from the SEC on this very serious issue. As it stands now the SEC is working with tiny companies to punish investors. Let me say that again, the SEC is actively colluding with corrupt management to rip off shareholders. It's time to stop. The issue doesn't get air time because the companies in question are small so it's the individual investor such as myself who stands to lose. Item 201(b) and Exchange Act Rule 12(g) do not require companies to recognize all shareholders. Item 201(b) and 12(g) do not count shares held in street name as real owners of stock. Rule 12g allows companies to deregister if they have less than 300 "shareholders" without so much as a vote and the SEC allows companies to conveniently forget about all shareholders held in street name.

Please contact me at your earliest convenience to discuss this issue. When will the SEC report on File No. S7-06-16?

I write a blog about stocks. I have written about the SEC's mistreatment of shareholders and it is one of my most popular articles with nearly a thousand page views:

<http://www.nonamestocks.com/2016/06/the-sec-allows-companies-to-go-dark.html>. Recently I wrote another post discussing how the SEC and much of the financial industry ignore small shareholders: <http://www.nonamestocks.com/p/dark-companies.html>.

I was referenced in a Wall Street Journal written by Jason Zweig:

<http://blogs.wsj.com/moneybeat/2016/06/10/shareholders-are-disappearing-before-our-eyes/> which is repeated on his blog:

<http://jasonzweig.com/shareholders-are-disappearing-before-our-eyes/>. Jason outlines how ridiculous the SEC definition of "shareholder of record" is. He notes that Lumber Liquidators has only 8 official shareholders of record...you tell me if that is just.

My blog post resulted in another blogger writing a post asking people to comment to the SEC on this grave issue:

<http://www.oddballstocks.com/2016/07/don-let-these-companies-hide-in-dark.html>.

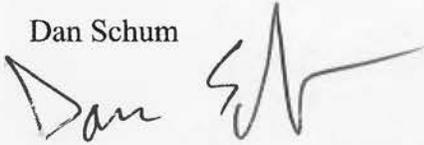
Additionally many individual investors commented to the SEC on File No. S7-06-16.

As you can see this issue is very important to the small investor. It is in the public interest to receive protection from the SEC.

I have attached printed versions of the referenced articles. Please read them over and contact me when you are ready to discuss.

Thank You,

Dan Schum

A handwritten signature in black ink, appearing to read "Dan Schum". The signature is stylized with a large, sweeping "D" and a long, horizontal stroke extending to the right.

Address: 1505 Montgomery Dr.

Vista, CA 92084

Phone: (818)-859-0014

Email: dschummy@gmail.com

# NoNameStocks

Searching for value in the obscure

[Home](#) [Dark Companies, The SEC, OTC Markets, Brokerages](#) [About Me](#) [Contact](#)

Wednesday, June 1, 2016

## The SEC allows companies to go dark

There is a rule, Rule 12g, from the SEC which allows companies to deregister if they have less than 300 shareholders "of record". A good background explanation can be found here. If you invest in the microcap space then issue should concern you. If you stay here long enough one of your companies will go dark and the stock price will tank and the company will tell you to go pound sand when you ask for a report..

Here is the SEC rule. Rule 12g-4 allows a company to deregister if it has less than a certain number of shareholders. That number is 1200 for a bank or 300 for other companies.

I think the 1200 is way too high but that's another discussion. The rule's intention is if a company was public and now is nearly private then they should be able to deregister from the SEC, stop filing reports, and save themselves some money. As a datapoint, KCLI approximated savings of \$850k per year to stop filing with the SEC just last year. That's a big draw and benefit to small companies who don't need to tap the public markets for additional funds.

Imagine a tiny company with only a million shares that is majority owned by someone. The majority owner does not care about selling shares in their lifetime. If they can save 3/4 of a million dollars annually that is a big deal. Great deal for the insider who will know how operations progress but horrible for the general shareholder left in the dark.

The problem is with SEC Rule 12g-1 which defines shareholders "of record" to not include those shares held "in street name". I hold shares in street name. You likely hold shares in street name. In late 2002, it was estimated that over 84% of securities were held in street name. Street name means that while you own the shares, the official shareholders on the record books is your broker, such as Fidelity or Etrade or Merrill Lynch. Myself and a thousand of my closest friends may hold shares through Fidelity but the company would only be required to count us as 1. So when you see the number of shareholders listed on a companies 10K you are not seeing the real number of beneficial shareholders. The company may only have 200 shareholders "of record" listed in the filings but really have 20,000 beneficial shareholders.

Where am I going with this? Well the SEC defines these rules and allows companies to go dark. I will repeat that, the SEC allows this. The SEC wrote the rule in 1965 when only 23.7% of shares were held in street name. Now we have over 84% of shares held in street name and the SEC has not modified the rule.

I have written to the SEC in the hopes they may change. I don't think they will but who knows. People have been urging them to change this rule for years but they have not. I'm not sure why. Even their own Advisory Committee on Smaller Public Companies advised them yet they did not act. Below is my letter. You should tell them how you feel

Recently the SEC asked for comments on a proposal. They are considering what to require of companies when disclosing how many shareholders they have. I took the opportunity to recommend they require proper disclosure of all shareholders.

The SEC asked for comments be submitted by July 21, 2016 in this way:

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

Use the Commission's Internet comment form (<http://www.sec.gov/rules/concept.shtml>);

Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-06-16 on the subject line; or

Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Even if you are late I encourage you to communicate with them. It will only change if we push the issue.

Dan

my email to the SEC:

Tell The SEC to Protect The Little Guy

## The SEC allows companies to go dark

There is a rule, Rule 12g, from the SEC which allows companies to deregister if they have less than 300 shareholders "of record"....

Search This Blog

Search

Disclaimer

This site is for entertainment purposes only. Do your own research. Most companies I talk about are tiny and their shares illiquid. Use limit orders. I am frequently wrong.

Recent Comments

Dan Schum commented on fidelity blocks dark companies: "Calling in doesn't change anything. But it's not quite all stop signs. For example ADDC has..."

Marlin gene commented on fidelity blocks dark companies: "So even if I call it in no stop signs allowed at all or just some?"

Dan Schum commented on comx is as cheap as they come: "The UK sub, which does most of their business, files online as mentioned above. For the complete..."

Anonymous commented on comx is as cheap as they come: "where did you managed to get their annual report? cant find any report online"

Anonymous commented on iomt market cap less than gallon of gas: "stock price showing 0.11 on my broker. so you have a 10x right now. you should sell"

Tags

- ADDC
- BDR
- BLGA
- BMRA
- Brokerage Firms
- COMX
- CVV
- Dark Companies
- EKCS
- ELST
- ESCC
- FORD
- GIGA
- GLGI
- HEMA
- IEHC
- IOMT
- MICT
- MRCR
- OTC Markets
- Performance
- POLXF

# NoNameStocks

Searching for value in the obscure

[Home](#)   [Dark Companies, The SEC, OTC Markets, Brokerages](#)   [About Me](#)   [Contact](#)

## Dark Companies, The SEC, OTC Markets, Brokerages

Every company must file reports with the Securities and Exchange Commission (SEC) when first selling shares to the public. Dark companies are those that have retreated, often times leaving shareholders with heavy losses and a stock they know nothing about. They have deregistered from the SEC and forgotten about the very shareholders they once asked for money. Dark companies have shirked their fiduciary responsibility while the SEC, who is supposed to protect us, allows this to happen.

There are several levels of dark. When companies deregister from the SEC they move onto the OTC Markets group of exchanges. Some continue to file all the normal SEC reports. Some file only annuals. Some file through the official OTC Markets channel while some post reports on their own website or just mail a paper copy to shareholders. Some make all the reports and just give them out when asked. Some require proof of stock ownership and signing of a non-disclosure agreement. Some go completely dark and share absolutely no information. Some still pay for an audit while others don't.

Most companies are required by state law to provide annual financial statements to any shareholder who asks as well as hold an annual meeting. NY and DE for example have these state laws in place. Not all companies care about this law.

Unfortunately the industry makes it difficult to deal with dark company stocks. Brokerages don't want to support trading while the companies don't want to give out information. But behind the difficulty lies opportunity as not many people fish in this pond.

I wrote this page to organize the series of blog posts I have written to do with dark companies, the SEC, OTC Markets, and brokerages. This is a very important group of information.

First Fidelity blocked me from buying any more dark stocks. Actually they block purchases of any stock on the OTC Market stop designation list (more on that throughout these posts). This after I already held these stocks in my Fidelity account. I had been a customer for many years and managed a few retirement accounts through them. I called, emailed, and online chatted with way too many support people but in the end they somehow feel it's 'too risky.'

--> [Fidelity blocks dark companies](#) <--

One big problem with these dark companies is the SEC allows it all to happen. Many companies deregister when they should not be allowed to. Shareholders are left with a dropping stock and no information with which to make an informed decision. The SEC's ridiculous definition of shareholder "of record" aids these companies. I wrote a letter to the SEC then a blog post encouraging others to do the same (I still encourage you to write to the SEC as noted in the post). Somehow Jason Zweig found my blog post and quoted me in a WSJ article (free version here). Jason focused on how misrepresentative this SEC definition of shareholder of record really is.

--> [The SEC allows companies to go dark](#) <--

The most surprising thing was when OptionsHouse abruptly gave me 30 days to close my account. My wife got the same message on the same day for her account. Again I was on the phone with customer service so much they must have hated me. I got passed up to a manager but could not get any higher. They never would tell me why they chose to close my account but I think it has to do with my owning of dark companies on the OTC Markets stop designation list. They let me buy the stocks then told me to leave.

--> [OptionsHouse kicked me out](#) <--

When Fidelity blocked dark companies I started looking into other brokerages to move my accounts then OptionsHouse really pushed up the priority. In the end I contacted every online broker I could find. I talked with 40 brokerages and only 2 said they would take my accounts in transfer. A number of brokerages would let me trade the stocks I want but almost none would take my stocks in an account transfer. Still I gathered information from each broker on how they treat dark stocks. This post gets into the details of the OTC Markets stop designation list that influences brokerages. A table is provided to summarize all the info I gathered from the brokerages.

--> [Brokerage Firms, OTC Markets, and Dark Companies](#) <--

I sent my blog post Brokerage Firms, OTC Markets, and Dark Companies to the CEO of OTC Markets and pretty quickly got a call back from him. We talked on the phone along with some of his colleagues and they explained their side of the story. The problem is they are assigning some level of risk to these dark companies without really analyzing the company. If a dark company does not file through the official OTC Markets channel, and pay the associated fee, they end up on the stop designation list. Unfortunately brokerages seem to want this stop designation list and use it as a filter. I wish OTC Markets would keep the commentary to themselves.

--> [A Conversation With OTC Markets](#) <--

[Tell The SEC to Protect The Little Guy](#)

[The SEC allows companies to go dark](#)

There is a rule. Rule 12g, from the SEC which allows companies to deregister if they have less than 300 shareholders "of record"....

Search This Blog

Disclaimer

This site is for entertainment purposes only. Do your own research. Most companies I talk about are tiny and their shares illiquid. Use limit orders. I am frequently wrong.

Recent Comments

Dan Schum commented on [fidelity blocks dark companies](#): "Calling in doesn't change anything. But it's not quite all stop signs. For example ADDC has..."

Marlin gene commented on [fidelity blocks dark companies](#): "So even if I call it in no stop signs allowed at all or just some?"

Dan Schum commented on [comx is as cheap as they come](#): "The UK sub, which does most of their business, files online as mentioned above. For the complete..."

Anonymous commented on [comx is as cheap as they come](#): "where did you managed to get their annual report? cant find any report online"

Anonymous commented on [iomt market cap less than gallon of gas](#): "stock price showing 0.11 on my broker. so you have a 10x right now. you should sell"

Tags

- [ADDC](#)
- [BDR](#)
- [BLGA](#)
- [BMRA](#)
- [Brokerage Firms](#)
- [COMX](#)
- [CVV](#)
- [Dark Companies](#)
- [EKCS](#)
- [ELST](#)
- [ESCC](#)
- [FORD](#)
- [GIGA](#)
- [GLGI](#)
- [HEMA](#)
- [IEHC](#)
- [IOMT](#)
- [MICT](#)
- [MRCR](#)
- [OTC Markets](#)
- [Performance](#)
- [POLXF](#)

From: Dan Schum  
Sent: June 1, 2016  
To: rule-comments@sec.gov  
Subject: File Number S7-06-16

Hello,

I would like to comment on Item 201(b) listed on page 173 of the [Business and Financial Disclosure Required by Regulation S-K concept](#).

I am a private investor focused mainly on the microcap sector. Large companies are followed by many high profile institutional investors and therefore competition is high for their securities. There is little room to form an edge as an individual when thousands of others are all competing in the same space. It is for this reason I, and many other individual investors, look at microcaps. A tiny company is just too small to invite the large, well funded, and highly trained institutional investors of Wall Street. The SEC must protect investors such as myself just as much as the large institutional investors.

As it stands now the SEC is working with tiny companies to punish investors. Let me say that again, the SEC is actively colluding with corrupt management to rip off shareholders. It's time to stop. The issue doesn't get air time because the companies in question are small so it's the individual investor such as myself who stands to lose. Item 201(b) and Exchange Act Rule 12(g) do not require companies to recognize all shareholders. Item 201(b) and 12(g) do not count shares held in street name as real owners of stock. Rule 12g allows companies to deregister if they have less than 300 "shareholders" without so much as a vote and the SEC allows companies to conveniently forget about all shareholders held in street name. What this means is there could be 10,000 people holding stock through one broker and the SEC would only consider this to be 1 shareholder. When the Commission first adopted Rule 12g5-1 in 1965, approximately 23.7% of securities were held in nominee or street name. In late 2002, it was estimated that over 84% of securities were held in nominee or street name. (credit to the [SEC Advisory Committee on Smaller Public Companies](#)) The means right now most shares are held in street name yet the SEC does not recognize them; put another way the SEC is only protecting 16% of shareholders. Think about that for a minute while considering why the SEC was formed in the first place.

So let's say a tiny company wants to stop filing reports. Management may have a number of reasons for doing this. Some reasons are valid and noble such as wanting to save money. Other reasons may be less so such as wanting to manipulate price to buy stock at depressed levels. If the company is very small then chances are they have less than 300 shareholders "of record" as defined by Item 201b and Rule 12g. All the company has to do is file a couple of forms and they can disappear forever with no thought given to the thousands of real shareholders holding shares in street name.

Do you know what happens to the stock price of a company that deregisters from the SEC? It drops to the floor. Shareholders are left behind as the company discloses nothing. No one knows revenue, earnings, or book value. The only thing people know is management doesn't care for shareholders so they sell and pretty soon the stock has lost most of its value.

When a company goes public they sell shares to raise money with all buyers becoming shareholders. The company owes it to these new shareholders to release information and

the SEC owes it to the public to protect these new shareholders. The new shareholders have helped out the company and the company must repay the favor by giving information, at a minimum. But Item 201b and rule 12g allow companies to shirk this responsibility. Imagine you buy stock in a small company. You are excited about the opportunity this new company has to make it big. Then the company abruptly stops filing any sort of report. You ask the company for information only to be told they are not required to divulge anything because they have filed a form 12. They don't answer the phone or respond to your emails. The stock price tanks as shareholders are left in the dark. Your retirement is a mess. The company's management is now free to buy shares for pennies on the dollar as they are the only ones with any idea what is going on. You have no one to turn to. The government agency supposedly there to help, the SEC, does not recognize you as a shareholder so you are out of luck. Eventually you have to sell at a huge loss.

Item 201(b) and rule 12(g) should be modified to require companies to recognize all beneficial shareholders, including those who whole share in street name. This was surely the intent when rule 12g was adopted 50 years ago. This is important for common stock shareholders of all companies. This is mostly important for common stock shareholders of very small companies who have near 300 shareholders "of record".

There is a long list of people who agree with my position. The SEC Advisory Committee on Smaller Public companies recommended the SEC modify it's definition of shareholders "of record" to include those shares held in street name in 2006 (see Recommendation IV.S.1 here <https://www.federalregister.gov/articles/2006/03/03/06-1992/exposure-draft-of-final-report-of-advisory-committee-on-smaller-public-companies>) Stephen J. Nelson, on behalf of eight institutional investors, authored a petition dated July 3, 2003 to amend Rule 12g5-1 in a manner similar to that which the Committee has proposed. The NY State Bar also expressed general support for a reconsideration of the "held of record" definition. Attorneys, who represent smaller public companies and are active members of the Committee on Federal Regulation of Securities and the Small Business Committee of the American Bar Association's Section of Business Law have sent in a comment to File No. 265-23 in support of this position (see <http://www.sec.gov/rules/other/265-23/aywalker041106.pdf>)

Yet the SEC has not acted. It is time for the SEC to stand up for the little guy. Stand up for the individual investor searching the microcap space. Stand up for the couple managing their 401k as retirement quickly approaches. I urge you to modify Item 201b and Rule 12g to redefine shareholders of record to include all those shares held in street name.

I look forward to your response.  
Thank you for your time,

Dan Schum