

FORM 13F CONFIDENTIAL TREATMENT REQUESTS BASED ON A CLAIM OF ONGOING ACQUISITION/DISPOSITION PROGRAM

This IM Guidance Update is meant to assist institutional investment managers that may wish to request confidential treatment for certain information reported on Form 13F by elaborating on the types of information that might be relevant in evaluating a confidential treatment request for an Ongoing Acquisition/Disposition Program in a Reportable Security.

Section 13(f) of the Securities Exchange Act of 1934 (Exchange Act)

Since 1975, Congress has required any investment manager that exercises investment discretion with respect to accounts holding certain U.S. exchange-traded equity securities (Reportable Securities) having an aggregate fair market value of \$100 million or more (Institutional Manager), to file with the Commission quarterly reports of those holdings under Section 13(f) of the Exchange Act. The quarterly reports, filed on Form 13F, must be filed within 45 days of the end of the calendar year during which the \$100 million threshold was satisfied and within 45 days of the end of the first three calendar quarters that follow. An Institutional Manager's Form 13F must include, as of the end of the calendar quarter, each Reportable Security's name and CUSIP number, the number of shares held, and the market value of the position, generally aggregated across accounts with respect to which the Institutional Manager exercises investment discretion.

Section 13(f) mandates that the Commission tabulate the information appearing in the quarterly reports and promptly disseminate the information to the public. Section 13(f) also permits the Commission, in relevant part, to delay or prevent the public disclosure of information "as it determines to be necessary or appropriate in the public interest or for the protection of investors . . . in accordance with [the Freedom of Information Act (FOIA)]." Under Section 13(f)(5), "[i]n exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets."



Confidential Financial Information

One of the several categories of information protected under the Commission's FOIA rules concerns matters that "disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Confidential Financial Information). An Institutional Manager seeking to delay or prevent public disclosure of any such Confidential Financial Information reported on Form 13F must submit a written request for confidential treatment (CT Request) following the procedures set forth in Rule 24b-2 under the Exchange Act and the Commission's Instructions to Form 13F.

IM staff reviews and acts on CT Requests concerning Form 13F information pursuant to delegated authority from the Commission. Staff guidance for potential CT Request filers is available in the form of Frequently Asked Questions at <http://www.sec.gov/divisions/investment/13ffaq.htm> and a 1998 staff letter (1998 Letter) available at <http://www.sec.gov/divisions/investment/guidance/13fpt2.htm>.

Ongoing Acquisition/Disposition Program

One particularly common type of CT Request for information reported on Form 13F, under the FOIA category of Confidential Financial Information, concerns information that would reveal an Institutional Manager's ongoing program of acquisition or disposition of a Reportable Security (Ongoing Acquisition/Disposition Program).

The 1998 Letter, among other things, provided detailed guidance to Form 13F filers that might be making CT Requests for an Ongoing Acquisition/Disposition Program. In particular, the 1998 Letter elaborated on five categories of information that Form 13F requires to be provided in a CT Request for an Ongoing Acquisition/Disposition Program in a Reportable Security, in order for the Commission to be able to make an informed decision about whether delaying or preventing public disclosure is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets:

- details about the specific investment program being followed with respect to a Reportable Security and its ultimate objective;
- an explanation of how the public would be able to discern the Institutional Manager's strategy with respect to the Reportable Security from the data reported on Form 13F;
- information demonstrating that the program is ongoing, so that public disclosure would be premature;
- a demonstration of the likelihood of substantial harm to the Institutional Manager's competitive position in the Reportable Security if the CT Request is not granted; and
- the period of time for which confidential treatment is requested.

Additional Guidance

In reviewing CT Requests for Ongoing Acquisition/Disposition Programs since issuing the 1998 Letter, the staff has further identified information, for each of the above five categories, that is particularly helpful in reaching an informed decision on whether delaying or preventing public disclosure is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets. Such information includes the following:

- A CT Request Should Provide Details about the Ongoing Acquisition/Disposition Program.
 - ▲ The description of the program in a CT Request should be specific to each Reportable Security covered by the CT Request.
 - ▲ Discuss when the program started and the initial transaction(s).
 - ▲ Discuss how far the program has progressed (for example, the number of shares of the Reportable Security purchased until each of the quarter end and the CT Request date, the number of days traded, price ranges).
 - ▲ Describe the program's ultimate goal, including as a percentage of the Reportable Security issuer's total outstanding securities.

- A CT Request Should Explain Why Public Disclosure Would Reveal the Program.
 - ▲ Discuss whether any information is publicly available about the Institutional Manager's position in the Reportable Security and, if so, provide a description of the publicly available information.
 - ▲ Explain why public disclosure on Form 13F likely would reveal the program, given that Form 13F disclosure generally provides only an historical "snapshot" of aggregated holdings in the Reportable Security and does not require disclosure of, for example, the timing or price of, or reason for, any purchase or sale transaction.
 - ▲ Explain how the public would discern from Form 13F data the Institutional Manager's intent to acquire/dispose of the Reportable Security in the future.

- A CT Request Should Demonstrate that the Program is Ongoing So That Public Disclosure Would Be Premature.
 - ▲ Provide information to demonstrate that the program is ongoing both at the end of the quarter and at the time the CT Request is filed (for example, discuss any purchases or sales of the Reportable Security that took place between the end of the quarter and the filing of the CT Request and provide the details of the purchases or sales).

- ▲ Provide details about the Institutional Manager’s trading activity in the Reportable Security, including an explanation of why the program was ongoing during any periods when no transactions occurred.
- A CT Request Should Demonstrate the Likelihood of Substantial Harm.
 - ▲ Specify the manner in which the Institutional Manager’s competitive position in the Reportable Security is likely to be substantially harmed by public disclosure of Form 13F data.
 - ▲ Provide a description and comparison of any prior instances of market reaction to the Institutional Manager’s public disclosure of its position in an issuer (for example, discuss the manner in which the prior public disclosure was made, the broader stock market context, the issuer’s capitalization, industry sector, and issuer-specific movements at the time surrounding the prior public disclosure).
 - ▲ Explain why the likely harm to the Institutional Manager’s competitive position in the Reportable Security should be viewed as “substantial.”
- A CT Request Should Justify The Requested Period of Confidential Treatment.
 - ▲ Explain the projected timeframe for the Institutional Manager to reach the ultimate objective of its investment program in the Reportable Security.
 - ▲ Discuss whether there is any anticipated public disclosure, in accordance with a regulatory requirement (for example, Schedule 13D/G) or otherwise, that may be relevant to the requested period of confidential treatment.
 - ▲ Discuss any other factors that may be relevant to the confidential treatment period (for example, the amount of capital invested or available for investment, market price of the Reportable Security, the Institutional Manager’s existing holdings, target size (if any) of the position, market capitalization, and trading volume).

The information described above is not intended as an exclusive list of considerations that a potential CT Request filer might wish to present in requesting confidential treatment for an Ongoing Acquisition/Disposition Program. The staff also notes that there is no set “formula” for a successful CT Request, and that all relevant information will receive appropriate consideration. The staff hopes that this guidance will further assist Institutional Managers that might be considering filing CT Requests for information reported on Form 13F based on a claim of an Ongoing Acquisition/Disposition Program in a Reportable Security.

This IM Guidance Update summarizes the views of the Division of Investment Management regarding various requirements of the federal securities laws. Future changes in laws or regulations may supersede some of the discussion or issues raised herein. This IM Guidance Update is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved of this IM Guidance Update.

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- ▲ protect investors
- ▲ promote informed investment decisions and
- ▲ facilitate appropriate innovation in investment products and services

through regulating the asset management industry.

If you have any questions about this IM Guidance Update, please contact:

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