

NOV 16 1990



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

PUBLIC

DIVISION OF
INVESTMENT MANAGEMENT

November 16, 1990

Clinton C. Hotaling
Finance Department
New York State Teachers'
Retirement System
10 Corporate Woods Drive
Albany, New York 12211-2395

Section	13(f)
File	
Public Availability	11/16/90

Dear Mr. Hotaling:

Your letter of August 9, 1990 concerns the New York State Teachers' Retirement System's ("NYSTRS") reporting of equity securities loaned to third parties ("loaned securities") on Form 13F. This letter confirms our conversation with Anthony Chromczak of NYSTRS that NYSTRS should continue to report loaned securities on Form 13F as being held by NYSTRS for purposes of complying with Section 13(f) of the Securities Exchange Act of 1934 (the "1934 Act") and Rule 13f-1 thereunder.

According to Mr. Chromczak, NYSTRS typically lends certain equity securities to a third party borrower in exchange for cash in an amount equal to the market value of the securities loaned plus an additional cash amount representing compensation to NYSTRS for making the loan. While in possession of the loaned securities, the borrower receives any dividends and has any voting rights associated with the loaned securities. At the conclusion of the loan, the borrower exchanges the loaned securities for the cash amount deposited with NYSTRS less NYSTRS's compensation.

Rule 13f-1 requires every institutional investment manager which exercises investment discretion to "accounts holding" section 13(f) securities ^{1/} having an aggregate fair market value of at least \$100 million to file a report on Form 13F with the Commission. Form 13F requires managers filing the report to report "holdings" of all classes of securities. Neither the instructions to Form 13F nor the proposing or adopting releases of Rule 13f-1 address how to report loaned securities. Nor do the Form or the releases address when a given security should be considered to be "held" in an account under the discretion of an

^{1/} Rule 13f-1(c) defines "section 13(f) securities" as equity securities described in section 13(d)(1) of the 1934 Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association.

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institutional investment manager (the "Reporting Manager"). While an argument can be made that loaned securities are held in the accounts of the borrowers, it is our opinion that it would be more consistent with the purposes of Section 13(f), as evidenced by its legislative history, to consider loaned securities to continue to be held in accounts under the investment discretion of the lender.

Rule 13f-1 incorporates the definition of "investment discretion" set forth in Section 3(a)(35) of the 1934 Act, which deems a person to exercise investment discretion with respect to an account if such person is authorized to determine or makes decisions on what securities or other property shall be purchased or sold for the account, even though some other person may have responsibility for such investment decisions. The Reporting Manager still has investment discretion over the loaned securities because he has the authority to sell the loaned securities, even though such transactions typically may not be consummated until the conclusion of the loan.

In addition, the non-reporting of the loaned securities could render the data base created by Form 13F filings incomplete and therefore unsuitable for analyses of trading activities of Reporting Managers. Section 13(f) was enacted by Congress after a study conducted by the Commission in response to Congress' directive to study and investigate "the purchase, sale, and holding of securities by institutional investors of all types in order to determine the effect of those activities upon the maintenance of fair and orderly securities markets, the stability of those markets, and the interests of issuers of securities and the public." ^{2/} The legislative history of Section 13(f) reveals that its purpose is to: (1) improve and enlarge the available data regarding institutional managers and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets, and (2) vest in one agency, the Commission, the responsibility to establish a uniform reporting standard and a uniform centralized data base. ^{3/} Commission representatives testified at the hearings on

^{2/} Securities Exchange Act Rel. No. 14852 (July 31, 1978) (release adopting Rule 13f-1). See also H.R. Doc. No. 64, 92nd Cong., 1st Sess. V (1971).

^{3/} See S. Rep. No. 75, 90th Cong., 1st Sess. 85 (1975).

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Section 13(f) that the primary users and beneficiaries of information collected by Form 13F should be the public. 4/

Both the Commission and Congress realized that individuals using the data generated by filings on Form 13F would compare data reported from different periods to measure the influence and impact of institutional investment managers on the securities markets. 5/ If Reporting Managers do not report loaned securities, it would be difficult to analyze the data of different reporting periods of a given Reporting Manager because no one will be able to determine whether the difference in holdings is caused by the lending of securities or the purchase or sale of securities. Thus, for example, one could improperly infer greater trading activity by a Reporting Manager when in actuality the Manager only lent securities. We believe that the reporting of loaned securities on Form 13F would make comparisons

4/ See Hearings on Securities Act Amendments of 1975, 95th Cong., 1st Sess. 545, 565 (1977) ("Although the Commission does not plan to make extensive use of information that could be gathered under Section 13(f) at the present time, we do believe that disclosure of holdings of institutional managers is in the public interest for the reasons set forth in the Senate Report: making information about institutional holdings available so that individuals and other investors can draw their own conclusions from it and enhancing public confidence in the institutions and the markets by enabling the public to assess for itself the concentration and influence of institutional managers in the market.")

5/ It was noted in the Senate Committee Report on Section 13(f) that "[p]erhaps the most important justification for the information collection program which this bill would authorize is the need to collect and disseminate to individual investors data about institutional investment managers. Many people believe that it is not possible to make informed investment decisions on a security without information related to the likely market activity and the degree of institutional concentration in the security." S. Rep. No. 75, 94th Cong., 1st Sess. 82 (1975). The Commission noted that "commentators emphasized that an evaluation of the investment philosophy and policies of a prospective manager is crucial in making an effective comparison and that such an evaluation is dependent upon a periodic examination of a manager's investment decisions as reflected by his holdings and transactions." Securities and Exchange Act Rel. No. 15461 (Jan. 5, 1979).

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of reports from different periods more meaningful since any change in a Reporting Manager's position in an individual security would be caused solely by either a purchase or sale of a security. ^{6/} Finally, if institutional investment managers are not required to report loaned securities, they could avoid the reporting requirements of Rule 13f-1 by lending enough securities on the last trading day of each month to bring the total amount of investments they manage under \$100 million. This obviously would substantially undermine Congress' intent in adopting Section 13(f).

Accordingly, for the reasons discussed above, this letter confirms the conversation with Mr. Chromczak that NYSTRS should continue to report loaned securities on its Form 13F.

Sincerely,

Bibb L. Strench

Bibb L. Strench
Staff Attorney

^{6/} Likewise, to maintain the integrity of the data base, a Reporting Manager who borrows securities should not report those securities on its Form 13F.

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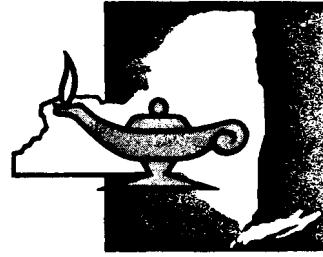
10 Corporate Woods Drive

Albany, New York 12211 - 2395

H. N. Langlitz, Executive Director

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Finance Office

August 9, 1990

Mr. Thomas S. Harman
Chief Counsel
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: NYS Teachers' Retirement System
CIK number 314969

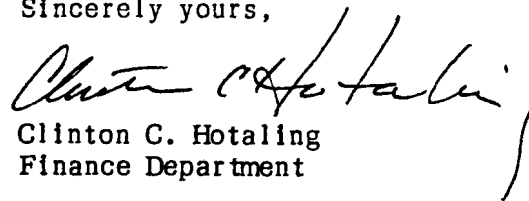
Dear Mr. Harman:

I am writing you regarding the treatment, on the SEC's 13-F report, of securities on loan.

The instructions for filing the 13-F report do not address the issue of securities loaned, however, securities on loan are not "owned" by us with respect to dividends and voting rights.

We have been advised by Mr. Bibb Strench to continue reporting as we have been until we are advised by you of any different treatment.

Sincerely yours,


Clinton C. Hotaling
Finance Department

CCH/db