

**VIA EMAIL**

February 1, 2013

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

**Re: Petition for Rulemaking Under  
Section 13(f) of the Securities Exchange Act of 1934**

Dear Ms. Murphy:

NYSE Euronext (“NYSE”), along with the Society of Corporate Secretaries and Governance Professionals (the “Society”) and the National Investor Relations Institute (“NIRI”), hereby respectfully submit this petition for rulemaking to the U.S. Securities and Exchange Commission (the “Commission”) pursuant to Rule 192(a) of the Commission’s Rules of Practice, requesting that the Commission amend the beneficial ownership reporting rules under Section 13(f)<sup>1</sup> of the Securities Exchange Act of 1934<sup>2</sup> (as amended, the “Exchange Act”) in order to shorten the reporting deadline under paragraph (a)(1) of Rule 13f-1.<sup>3</sup> NYSE is a national securities exchange registered under Section 6 of the Exchange Act. NYSE lists the securities of more than 2,500<sup>4</sup> public companies that may benefit from Commission action on the matters discussed in this petition. The Society is a professional organization comprised primarily by members who are corporate secretaries and business executives involved in governance, ethics and compliance functions at public companies. NIRI is professional association of corporate officers and investor relations consultants who represent over 1,600 publicly held companies.

Pursuant to Rule 13f-1(a)(1), every institutional investment manager (a “Manager”) who exercises investment discretion with respect to accounts holding “Section 13(f) securities” having an aggregate fair market value of at least \$100,000,000 on the last trading day of any month must file a report on Form 13F.<sup>5</sup> Currently, paragraph (a)(1) of Rule 13f-1 requires Managers to file reports on Form 13F

---

<sup>1</sup> 15 U.S.C. 78m(f).

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 C.F.R. 240.13f-1.

<sup>4</sup> In addition to the public companies listed on NYSE, more than 430 public companies are listed on NYSE MKT LLC and more than 1,300 Exchange Traded Products are listed on NYSE Arca, Inc. NYSE MKT LLC and NYSE Arca, Inc., like NYSE, are registered with the Commission under the Exchange Act as national securities exchanges and are subsidiaries of NYSE Euronext.

<sup>5</sup> See Exchange Act Rule 13f-1 (17 C.F.R. 240.13f-1) and Form 13F under the Exchange Act.



Ms. Elizabeth M. Murphy  
February 1, 2013  
Page 2 of 11

with the Commission within 45 days after the last day of each calendar quarter. An extension beyond the 45-day delay period can be requested.

Section 13(f) of the Exchange Act was adopted by Congress as part of the Securities Acts Amendments of 1975.<sup>6</sup> According to the Commission's 1979 release mandating quarterly (as opposed to annual) Section 13(f) reporting:

The reporting system required by Section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, in order to improve the body of factual data available and to facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Section 13(f) empowers the Commission to adopt rules which would create a reporting and disclosure system to collect specific information concerning Section 13(d)(1) equity securities held in accounts over which certain institutional investment managers exercise investment discretion. It gives the Commission broad rulemaking authority to determine the size of the institutions required to file reports, the format and frequency of the reporting requirements, and the information to be disclosed in each report.<sup>7</sup>

The Commission has recognized the benefits that Rule 13f-1 reporting has for both investors and public companies. For example, in 1999, when adopting rules requiring the filing of Form 13F via EDGAR, the Commission noted 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>8</sup>

Former Chairman Schapiro has stated that the Commission intends to begin a review of the beneficial ownership reporting rules.<sup>9</sup> We, the undersigned, request that such review encompass the 45-day delay period under Rule 13f-1 – which has stood for over 30 years despite massive technological advances in recordkeeping and reporting systems over this period – and that this 45-day delay period be shortened for the reasons discussed below.

While this petition is focused on addressing the length of the delay under Rule 13f-1, we note that this request is made in the context of the Commission's existing authority under Section 13(f) of the Exchange Act, which provides that long-position reporting under Section 13(f) may not be required for periods shorter than one quarter. By contrast, Section 929X of the Dodd-Frank Wall Street

---

<sup>6</sup> Pub. L. No. 94-29, 89 Stat. 97 (1975).

<sup>7</sup> Exchange Act Release No. 15461 (Jan. 5, 1979), 44 FR 3033, at 3033-3034 (the "1979 Adopting Release").

<sup>8</sup> Exchange Act Release No. 40934 (Jan. 12, 1999), 64 FR 2843, at p. 2844-45 (the "EDGAR Adopting Release").

<sup>9</sup> See "Remarks at the Transatlantic Corporate Governance Dialogue" by Chairman Mary L. Schapiro (Dec. 15, 2011) (the "Chairman Schapiro 2011 Speech"), available at <http://www.sec.gov/news/speech/2011/spch121511mls.htm>.



Reform and Consumer Protection Act (the “Dodd-Frank Act”),<sup>10</sup> which amended Section 13(f)(2) of the Exchange Act, requires the Commission to promulgate rules obligating Managers to publicly report short sale activity *at a minimum* of once every month. We believe that the benefits to investors and public companies of long-position reporting, as discussed below, justify a similarly substantial increase of the frequency of Form 13F reporting, and encourages the Commission to raise this important issue with the appropriate Congressional oversight committees.

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

Under Rule 13f-1 as currently in effect, a Manager that makes an investment on January 1 is not required to report that holding until May 15, more than 19 weeks, or more than four months, after the transaction.<sup>11</sup> The length of the 45-day delay period under Rule 13f-1 is unnecessarily long, and to that extent the current delay period runs contrary to the interests of investors and public companies.

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>13</sup>

These concerns are especially acute given the tremendous growth in assets owned by institutional investors in the more than three decades since Form 13F reporting obligations were mandated, and the parallel decrease in direct shareholdings by individuals.<sup>14</sup> In 1980, 28 percent of outstanding U.S.

---

<sup>10</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>11</sup> See Instruction 1 to Form 13F.

<sup>12</sup> EDGAR Adopting Release at p. 2844.

<sup>13</sup> For public issuers, one of the issues may be to determine who is *not* a shareholder, as well as who is. See *e.g.* “How to Beat Hedge-Fund Bullies,” CFO Magazine (Jan. 26, 2007) (noting that in seeking to exert influence a “hedge fund could point to the amount of stock it held in a previous quarter” when in fact it had already sold the position).

<sup>14</sup> Compare Flow of Funds Accounts of the United States, Board of Governors of the Federal Reserve System, Table L.213 (1975-1984) with Flow of Funds Accounts of the United States, Board of Governors of the Federal Reserve System, Table L.213 (First Quarter 2012) (showing a decrease in household sector holdings of corporate equities from approximately 70% in 1975 to approximately 37% today). See also John C. Bogle, “Reflections on ‘Toward Common Sense and Common Ground?’”



Ms. Elizabeth M. Murphy

February 1, 2013

Page 4 of 11

equities were held by institutional investors, but by 2009 institutional ownership had grown to 51 percent of outstanding U.S. equities.<sup>15</sup> Institutional ownership is even more relevant to large corporations, as evidenced by the fact that in 2009 institutional investors owned 73 percent of the outstanding equity in the 1,000 largest U.S. corporations.<sup>16</sup> Institutional investors often have shorter-term investment horizons than individual investors;<sup>17</sup> hedge funds, for example, which manage more than \$2 trillion in assets,<sup>18</sup> have an average turnover rate of 35 percent per quarter.<sup>19</sup> The existing 45-day delay period virtually guarantees that individual investors and public companies will obtain little meaningful information from Form 13F about the equity holdings of institutional investors, despite the overwhelming importance of this sector to today's capital markets.

In addition, because with the existing time frames Managers may structure acquisitions and dispositions around filing deadlines, a Manager who so wishes could use the 45-day delay period to delay reporting significant purchases or sales of securities until weeks after the fact.<sup>20</sup> The advantage that the 45-day delay period gives Managers comes at the expense of other investors who trade without the benefit of knowing the size and scope of institutional holdings, and in that manner erodes price discovery, market transparency and, ultimately, investor confidence.<sup>21</sup> The Commission has long recognized the potential value of Form 13F information for investors and public companies. That value, however, cannot be fully realized when Managers are permitted to keep material information from reaching the market on a timely basis.

---

33 Iowa J. Corp. L. 31, 31 (2007) (noting that in 1950, financial institutions held 8% of U.S. equities and individuals held 92%; whereas in 2006, institutions held 74% of U.S. equities and individuals held 26%).

<sup>15</sup> The Conference Board, "The 2010 Institutional Investor Report: Trends in Asset Allocation and Portfolio Composition," at 22 (2010) (the "Institutional Investor Report").

<sup>16</sup> Institutional Investor Report at 27.

<sup>17</sup> For a discussion of these trends, see Report of the New York Stock Exchange Commission on Corporate Governance (Sept. 23, 2010), at pp. 12-13 (the "NYSE Report"), available at [http://www.nyx.com/sites/www.nyx.com/files/final\\_ccg\\_report\\_09-23-10.pdf](http://www.nyx.com/sites/www.nyx.com/files/final_ccg_report_09-23-10.pdf).

<sup>18</sup> HFR Global Hedge Fund Industry Report, Source Data (2012). For further discussion of the proliferation of hedge funds, see "Registration of Hedge Fund Advisers" by Commission Chairman William H. Donaldson (Oct. 26, 2004), available at <http://www.sec.gov/news/speech/spch102604whd.htm>; Testimony by SEC Chairman William H. Donaldson Concerning the Long and Short of Hedge Funds: Effects of Strategies for Managing Market Risk, Before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (May 22, 2003), available at <http://www.sec.gov/news/testimony/052203tswhd.htm>; Testimony by SEC Chairman William H. Donaldson Concerning Investor Protection Implications of Hedge Funds, Before the Senate Committee on Banking, Housing and Urban Affairs (Apr. 10, 2003), available at <http://www.sec.gov/news/testimony/041003tswhd.htm>.

<sup>19</sup> Goldman Sachs, "Hedge Fund Trend Monitor," at 3 (Nov. 19, 2012).

<sup>20</sup> See note 11, *supra*.

<sup>21</sup> See e.g. "Bill Ackman Doesn't Like Changing Rules, Icahn," The Wall Street Journal, Deal Journal (March 8, 2012), available at <http://blogs.wsj.com/deals/2012/03/08/bill-ackman-doesnt-like-changing-rules-icahn/> (noting that stocks typically rise when activist firms disclose investment stakes).



Ms. Elizabeth M. Murphy

February 1, 2013

Page 5 of 11

## 2. The Objectives Underlying Section 13(f) Support Reducing the Delay Period

The original reason the Commission cited for providing Managers with 45 days after a calendar quarter to report is no longer valid. Originally, the Commission proposed that reports on Form 13F be filed within 30 days of the end of each quarter.<sup>22</sup> When it adopted its final rule, however, the number of days was stretched to 45.<sup>23</sup> In explaining the extension, the Commission stated that it was “consistent with the views of a number of commentators who indicated that the 30 day filing requirement created an undue burden.”<sup>24</sup> In other words, the Commission’s original preference was for a shorter time period, and only practical considerations – considerations no longer relevant to large institutional investors given the substantial advances in information technology in the 34-year interim – led the Commission to lengthen the delay period to 45 days.

Indeed, an examination of the objectives of Section 13(f) supports shortening the delay period. As the Commission explained when adopting Rule 13f-1 in 1978, the Section 13(f) reporting system was intended to further two objectives:

First, the reporting system is designed to improve the body of factual data available and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Second, by making the Commission responsible for all gathering, processing, and dissemination of the data, Congress intended to permit establishment of uniform reporting standards and a uniform centralized data base.<sup>25</sup>

In the first case, it can only improve the quality of information available to the Commission, investors and public companies to have Form 13Fs filed more promptly. Indeed, because of the risk that the data included in a Form 13F will be stale long before the existing filing deadline, the excessive length of the deadline can itself have a negative impact on the quality of information available to the market.

Looking to the second cited objective, having Managers report in a time frame that is more similar to those applicable to Forms 13D, 13G and 4 would make reporting standards more uniform and remove an unfair advantage held by Managers over other investors, helping maintain a fair, orderly and efficient market.<sup>26</sup>

---

<sup>22</sup> Exchange Act Release No. 13396 (Mar. 22, 1977), 42 FR 16831.

<sup>23</sup> Exchange Act Release No. 14852 (June 15, 1978), 43 FR 26700 (the “1978 Adopting Release”). The 1978 Adopting Release made the requirement annual, but solicited comment on the usefulness and practicality of quarterly reporting and, seven months later, the Commission amended Rule 13f-1 to require quarterly filing. See 1979 Adopting Release at 3034 (noting that “[t]he utility of the [Form 13F] information was evidenced by the large number of commentators who expressed an interest in receiving information from quarterly reports.”).

<sup>24</sup> 1978 Adopting Release at 26702.

<sup>25</sup> 1978 Adopting Release at 26701.

<sup>26</sup> Similarly, NYSE would argue that beneficial ownership reporting obligations should be consistent across all market participants.



The Commission has cited a third objective for Section 13(f) of the Exchange Act. When adopting the requirement to file Form 13F on EDGAR, the Commission noted that the legislative history of Section 13(f) states that “rapid dissemination of the institutional disclosure information to the public [was] a fundamental purpose of the bill” and that “[o]ne of the important purposes of the bill would be dissemination of the institutional disclosure data to the public.”<sup>27</sup> A 45-day delay period can in no way be considered “rapid dissemination” in this era of instant communication, and so is contrary to this fundamental purpose of Section 13(f).

Rule 13f-1’s 45-day delay period, which has been in place for more than 30 years, stands in stark contrast to the Commission’s general trend towards substantially shorter reporting periods, which have themselves been supported by improvements in and widespread usage of information technology. Directors and officers must now report changes in their beneficial ownership of equity securities within two business days, and public companies must file their current reports on Form 8-K within four business days.<sup>28</sup> In some cases the Commission has removed any reporting delay entirely: under Regulation FD public companies are generally required to disclose material non-public information simultaneously with its intentional disclosure to third parties.<sup>29</sup> Similarly, filing deadlines for quarterly and annual reports have been substantially shortened.<sup>30</sup> Even the 10-day reporting period under Section 13(d), the length of which has been subject to robust criticism,<sup>31</sup> is substantially shorter than the generous month-and-a-half grace period that Rule 13f-1 allows Managers. Today’s markets rely on the expectation that material information will be disseminated promptly and widely; Rule 13f-1 should be revised to reflect that reality.

### **3. The Arguments in Support of Retaining a 45-Day Delay Period Are Unpersuasive**

Some Managers may believe that a 45-day delay continues to be warranted. In the context of defending Form 13F confidentiality requests,<sup>32</sup> some Managers have maintained that having to disclose their holdings more quickly would tip their hand to the market, driving the price of the security up (or down) and potentially impeding their investment strategy and, ultimately, reducing their rate of return. This argument appears to support the concerns that that the 45-day delay period works to the advantage of Managers at the cost of other investors.<sup>33</sup>

---

<sup>27</sup> EDGAR Adopting Release at 2845 (citing Senate Report 94-75, accompanying S. 249, at 266).

<sup>28</sup> See General Instruction 1 to Form 4 and General Instruction (B)(1) to Form 8-K.

<sup>29</sup> See Regulation FD Rule 100.

<sup>30</sup> See *e.g.* General Instruction A(2) to Form 10-K and General Instruction A(1) to Form 10-Q.

<sup>31</sup> See *e.g.*, Petition for Rulemaking Under Section 13 of the Securities Exchange Act of 1934, submitted by Wachtell, Lipton, Rosen & Katz (Mar. 7, 2011), File No. 4-624.

<sup>32</sup> Pursuant to Rule 24b-2 under the Exchange Act, a Manager may request confidential treatment for information required to be filed under Form 13F.

<sup>33</sup> Similar arguments have been made in the Section 13(d) beneficial ownership reporting context. See *e.g.*, SEC Chairman Schapiro Speech, December, 2011 (summarizing arguments for and against reducing the 10-day reporting window for Schedule 13D).



The purpose of 13(f) is to increase transparency of the ownership of securities to allow for companies and other shareholders to know when shares are accumulated by large investment managers. As we noted above, we believe the 45-day delay period itself impedes shareholder/public company engagement and, perhaps more importantly, an examination of the objectives underlying Rule 13f-1 supports the position that it is time for the 45-day delay period to be shortened.

#### **4. A Substantial Reduction in the 45-Day Delay Period Would Align Rule 13f-1 With Public Company Governance Best Practices**

Over the past decade, calls for greater communication and transparency between public companies and their shareholders have become ubiquitous. A wide spectrum of commentators have stressed the importance of engaging with shareholders directly, obtaining more information about them, encouraging their involvement, soliciting their input and regularly communicating with them about the company's affairs.<sup>34</sup>

For example, in a September 2010 report, the New York Stock Exchange Commission on Corporate Governance ("CCG") highlighted the critical nature of transparency to good corporate governance.<sup>35</sup> The CCG, which included a diverse group of corporate governance experts, including representatives of issuers, investors and others with significant backgrounds and experience in corporate governance and related issues, identified key corporate governance principles in their report, which included an emphasis on building long-term shareholder value, creating and sustaining a successful corporate governance structure, and engaging directors, management and investors – all of which would be furthered by greater transparency in share ownership, as proposed herein. The importance of increased communication between corporations and investors was a significant theme throughout the report. Indeed, in its sixth corporate governance principle, the CCG noted that investors should be held to appropriate levels of transparency and be required to disclose their holdings, including derivative and other security ownership, on a timely and equal basis.<sup>36</sup> In fact, the argument can be made that issuers are at risk of engaging the wrong shareholders due to outdated shareholder information and, therefore, at risk of disadvantaging their actual shareholders.

---

<sup>34</sup> See, e.g., IR Global Rankings, "The Board of Directors and its Shareholders," Issue 21 at 2 (Oct. 2010), available at [http://www.irglobalrankings.com/irgr2010/web/arquivos/irgr\\_NL\\_oct\\_EN.pdf](http://www.irglobalrankings.com/irgr2010/web/arquivos/irgr_NL_oct_EN.pdf) (recommending that boards "obtain more information about [their] shareholders, seeking the best means for communicating with them and improving this flow in order to encourage greater involvement and participation from them" and keep their shareholders informed of the strategic decisions taken by the company); The Aspen Institute, "Long-Term Value Creation: Guiding Principles for Corporations and Investors," at 2 (June 2010), available at <http://www.aspeninstitute.org/publications/aspen-principles-long-term-value-creation-guiding-principles-corporations-investors> (recommending that companies and investors "communicate on a frequent and regular basis"); and Committee for Economic Development, "Restoring Trust in Corporate Governance: Six Essential Tasks for Boards of Directors and Business Leaders," at 17 (Jan. 2010) (citing shareholder involvement as a principal means of holding management accountable).

<sup>35</sup> NYSE Report at 5.

<sup>36</sup> NYSE Report at 5 (stating that "good corporate governance includes transparency for corporations and investors").



Ms. Elizabeth M. Murphy

February 1, 2013

Page 8 of 11

Similarly, in 2009 an American Bar Association task force called on public company boards to “(a) affirmatively engag[e] with shareholders to seek their views; (b) consider[] shareholder concerns as an important data point in the development and pursuit of long-term corporate strategy; and (c) facilitate transparency by ensuring that shareholders are informed of the company’s efforts toward achieving its identified long-term goals and objectives.”<sup>37</sup> In 2012 the Business Round Table similarly noted that “[c]ommunication with shareholders is an important component of effective engagement,” and recommended that “[c]orporations ... proactively engage with their long-term shareholders,...take steps to educate shareholders ... about the board’s role and its oversight responsibilities” and “consider other appropriate mechanisms to solicit shareholder views.”<sup>38</sup> Indeed, institutional investors themselves have urged greater levels of communication between public companies and their shareholders.<sup>39</sup>

At the same time, issuers are being encouraged by proxy advisers to increase engagement with shareholders.<sup>40</sup> In a summary of its 2012 voting policy updates, the proxy adviser Institutional Shareholder Services Inc. stated that companies that receive more than 30 percent opposition during a “say on pay” vote “should discuss their outreach efforts to major institutional investors and provide the specific actions that they have taken to address the compensation issues that resulted in significant opposition votes.”<sup>41</sup> Similarly, Glass Lewis & Co., a proxy adviser, asserted in recent policy guidelines that directors “should demonstrate some level of engagement and responsiveness to address ... shareholder concerns” any time there is more than 25 percent opposition during a “say on pay” vote, the election of a director, or another management proposal.<sup>42</sup>

---

<sup>37</sup> The American Bar Association, “The Report of the Task Force of the ABA Section of Business Law Corporate Governance Committee on Delineation of Governance Roles & Responsibilities,” at 25 (Aug. 1, 2009), available at <http://apps.americanbar.org/buslaw/committees/CL260000pub/materials/20090801/delineation-final.pdf>.

<sup>38</sup> Business Round Table, “Principles of Corporate Governance--2012,” at 30 (June 2012), available at [http://businessroundtable.org/uploads/studies-reports/downloads/BRT\\_Principles\\_of\\_Corporate\\_Governance\\_-2012\\_Formatted\\_Final.pdf](http://businessroundtable.org/uploads/studies-reports/downloads/BRT_Principles_of_Corporate_Governance_-2012_Formatted_Final.pdf).

<sup>39</sup> See, e.g., The Vanguard Group, Inc., “Our Views on Corporate Governance,” available at <https://personal.vanguard.com/us/content/Home/WhyVanguard/AboutVanguardCorpGovernPrinciplesContent.jsp> (noting the importance of company officials’ regular communication with shareholders).

<sup>40</sup> Institutional Shareholder Services Inc., “2012 U.S. Proxy Voting Summary Guidelines,” at 21 (January 31, 2012), available at <http://www.issgovernance.com/files/2012USSummaryGuidelines1312012.pdf> (endorsing “proposals requesting that the board establish an internal mechanism/process...in order to improve communications between directors and shareholders”).

<sup>41</sup> Institutional Shareholder Services Inc., “U.S. Corporate Governance Policy: 2012 Updates,” at 8 (November 17, 2011), available at [http://www.issgovernance.com/files/ISS\\_2012US\\_Updates20111117.pdf](http://www.issgovernance.com/files/ISS_2012US_Updates20111117.pdf).

<sup>42</sup> Glass, Lewis & Co., “Proxy Paper Guidelines: 2013 Proxy Season,” at 2 (2012), available at [http://www.glasslewis.com/assets/uploads/2012/02/Guidelines\\_UnitedStates\\_2013\\_Abridged.pdf](http://www.glasslewis.com/assets/uploads/2012/02/Guidelines_UnitedStates_2013_Abridged.pdf).



Ms. Elizabeth M. Murphy

February 1, 2013

Page 9 of 11

Implicit in the Dodd-Frank Act is a mandate for issuers to improve their efforts to better engage shareholders and allow them to have a stronger voice in governance decisions.<sup>43</sup> Responding to these calls for enhanced shareholder engagement, and in order to navigate new regulatory developments such as the “say on pay” vote on management compensation that most public companies are now required to include on a periodic basis in their annual proxy statements, as well as the prohibition on uninstructed broker voting on matters relating to executive compensation and director elections,<sup>44</sup> public companies are in turn looking for more effective ways to reach their shareholders. For the reasons discussed above, the 45-day reporting delay imposed by Rule 13f-1 inhibits effective communications between a public company and its shareholders – simply put, in an equities market with a turnover ratio in 2011 of 188 percent,<sup>45</sup> it is difficult to communicate with shareholders if their identities are obscured by outdated reporting requirements. The 45-day delay imposed by Rule 13f-1 therefore deprives public companies of this critical shareholder information.

### **Petition for Rulemaking**

For the above reasons, we petition the Commission to shorten the quarterly reporting deadline contained in Rule 13f-1. Under the Commission’s existing Section 13(f) authority, we believe that it would be appropriate for the Commission to propose shortening the reporting period to two business days after the end of the calendar quarter. A two-business day deadline is consistent with the time period within which directors and executive officers are required to report beneficial ownership changes on Form 4 pursuant to Rule 16a-3(g)(1) under the Exchange Act,<sup>46</sup> as specifically required by Congress when it amended Section 16(a) of the Exchange Act through the enactment of the Sarbanes-Oxley Act.<sup>47</sup> We believe that the Congressional judgment embodied in this requirement establishes a solid presumption that reporting on this timetable is both feasible and in the public interest. We agree that a final decision on the appropriate length of the delay period should be made by the Commission after considering the comments of investors, public companies, Managers, other market participants and the general public. Please see Annex A attached hereto for our proposed revision to paragraph (a)(1) of Rule 13f-1.

\* \* \*

As previously noted, we believe that 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. As such, we encourage the Commission to raise this important issue with the appropriate Congressional oversight committees where consideration could be given to requiring no later than monthly reporting of long positions, similar to reporting of short-sale positions, or some lesser period as may be determined. Additionally, although

---

<sup>43</sup> See Sections 951, 952, 953, 955, 957 and 971 of the Dodd-Frank Act.

<sup>44</sup> See Sections 951 and 957 of the Dodd-Frank Act. See also NYSE Rule 452, item 21.

<sup>45</sup> Turnover ratio is the total value of shares traded during the period divided by the average market capitalization for the period. The World Bank, available at <http://data.worldbank.org/indicator/CM.MKT.TRNR>.

<sup>46</sup> 17 C.F.R. 240.16a-3.

<sup>47</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002).



Ms. Elizabeth M. Murphy  
February 1, 2013  
Page 10 of 11

filings under Regulation 13D-G fall outside the scope of this petition, we strongly support a rulemaking project devoted to the Section 13 beneficial ownership reporting rules. We agree with former Chairman Schapiro that it is important to bring the Commission's beneficial ownership rules up-to-date "in light of modern investment strategies and innovative financial products."<sup>48</sup>

Please do not hesitate to contact one of us should you have any questions regarding this petition. Thank you for your consideration.

Respectfully yours,

Janet McGinness  
Executive Vice President & Corporate Secretary  
NYSE Euronext

Kenneth A. Bertsch  
President & CEO  
Society of Corporate Secretaries and Governance Professionals

Jeffrey D. Morgan  
President & CEO  
National Investor Relations Institute

---

<sup>48</sup> See the Chairman Schapiro 2011 Speech.

Proposed Revision to Paragraph (a) of Rule 13f-1

\* \* \*

(1) Every institutional investment manager which exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of this section, having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 shall file a report on Form 13F with the Commission within [45] two business days after the last day of such calendar year and within [45] two business days after the last day of each of the first three calendar quarters of the subsequent calendar year.

\* \* \*