
MEMORANDUM

To: File S7-10-09

From: Jennifer Marietta-Westberg
Joshua White
Division of Risk, Strategy, and Financial Innovation

Re: Share Ownership and Holding Period Patterns in 13F data (update from 2003)

Date: November 24, 2009

Introduction

This memo updates an earlier analysis of share ownership level and holding period patterns in data derived from Form 13F filings, which are made quarterly by large institutional investment managers. The data and methods used here were chosen to conform to those discussed in the proxy access rule proposed in 2003.¹

Subject to the limitations of the methodology, assumptions, and data used, the attached tables illustrate the effects of variations in certain eligibility requirements on the number of institutional holders and issuers affected by proposed Rule 14a-11. Throughout, these tables focus on the holdings of individual institutional investment managers only; the tables do not show the potential of the formation of investor groups formed to collectively qualify for proxy access.

Specifically, the attached tables suggest the sensitivity of eligibility under the proposed rule to variations in ownership thresholds ranging from 1% to 10% and holding periods ranging from one to three years.

Methodology

As was the case in 2003, Form 13F filings are the sole source of data, and it should be noted that eligibility for proxy access under proposed Rule 14a-11, which keys off “beneficial ownership,” is different from the applicable definitions triggering holding reporting requirements under Form 13F. One of the key limitations of this data stems from investment managers reporting holdings on Form 13F over which they have investment discretion, while beneficial ownership for proposed Rule 14a-11 purposes is a function of a person having direct or indirect voting or investment power. The

¹ SEC Release No. 34-48626, October 23, 2003 (Security Holder Director Nominations); <http://www.sec.gov/rules/proposed/34-48626.pdf>.

implications of this key distinction, as well as other limitations implicit in our methodology, are described in a separate section below.

We obtained data from a Thomson Financial database derived from quarterly reports of institutional equity positions on Form 13F. The analysis is based on the quarter ending 12/31/2008 and identifies 6,416 unique companies with institutional holdings at that time. In estimating eligibility, we also used Thomson's data for shares outstanding. It is possible that other sources for shares outstanding may be more accurate or timely.

The one-, two-, and three-year holding periods were measured starting from 12/31/2008 and looking backward. Positions were counted for eligibility purposes only if reported at the end of each quarter in the applicable holding period. The analysis is confined to the common equity of U.S. issuers trading on the NYSE, NASDAQ, AMEX, or ARCA. Only single-class stocks were considered.

Results

Tables 1A and 1B show how the percentage of issuers with individual institutional investment managers eligible to use the proposed rule declines as a function of increasing the holding size threshold and the holding period. Table 1A addresses all companies, without restriction by market capitalization. Table 1B addresses only "megacaps," defined as issuers with more than \$50 billion in equity market value.

Tables 2 focuses on the holdings of four large pension funds. This particular subgroup was selected because of the ease of identifying a well-accepted list of the largest pension funds in the U.S.² The pension funds listed are the four largest pension funds (by assets under management) identifiable in the 13F data. The table shows how increases in the ownership threshold and the holding period reduce the number of issuers as to which these investors would be eligible for proxy access.

Tables 3, 4A and 4B look at the total number of "eligible issuer-investor pairs" under various scenarios. An "eligible issuer-investor pair" exists each time an investor owns a qualifying position in an issuer. For example, if investor A owns qualifying positions in issuers B and C, two eligible investor-issuer pairs exist. Each eligible issuer-investor pair effectively represents a proxy statement as to which a single institutional investment manager could have access under the holding period in question. The tables are arranged by issuer market capitalization and present results for both one- and two-year holding periods.

Limitations and Qualifications

The 13F database as reported by Thompson Financial is the best single dataset that is readily available to perform this analysis. It must be borne in mind, however, that these

² A list of the largest U.S. pension funds by assets was obtained from a survey by Watson Wyatt. The 2009 survey is available at: <http://www.pionline.com/article/20090907/CHART2/908289986/-1/WWTOPFUNDS>.

data are subject to a number of inherent limitations and potential sources for inaccuracy, as described below. As a result, the patterns reflected in the data in the tables should be taken as suggestive rather than definitive.

Differences in Ownership Definitions

On Form 13F, investment managers report holdings over which they exercise “investment discretion”. Institutional investment managers must report on Form 13F if they “exercise discretion” over \$100 million or more in 13F securities,³ even though another person is responsible for the investment decisions. By contrast, ownership under proposed Rule 14a-11 is based on direct or indirect voting or investment power. Many institutional investment managers, such as mutual funds, pension plans, and broker-dealers, with respect to their proprietary accounts, are also beneficial owners of securities reported on Form 13F; many others, such as investment advisers and broker-dealers managing private accounts and bank trust departments are not beneficial owners of reported securities.

Ambiguities Resulting from Aggregation of Multiple Accounts

Institutional investment managers aggregate the accounts of multiple account holders in their reports on Form 13F. This can overstate eligibility. There is no way to tell from the data whether an institutional investment manager reporting a holding level above the applicable threshold appears eligible merely because it is aggregating smaller holdings represented by individual accounts.

Possible Double-Counting

Since two or more reporting institutional investment managers can serve as advisers sharing investment discretion over shares held in the same account, it is possible that both institutional investment managers are reporting the same equity holdings on their respective 13F filings. While both co-advisers may report positions for the same account holder on Form 13F, both advisers are not allowed to vote the shares.

Equity lending can cause double-counting as well, since the lending owner and the borrower of the shares may both report ownership of the same position on Form 13F.

Limited Investor Coverage

The 13F filings cover a large part of institutional holdings, but not the entire universe. Only institutional investment managers holding \$100M in 13F securities are required to submit the form.

³ The list of Section 13(f) securities as defined by Rule 13f-1(c) is available at: <http://www.sec.gov/divisions/investment/13flists.htm>

Also, positions in which the institutional investment manager holds fewer than 10,000 shares and less than \$200,000 in aggregate fair market value on the reporting date are not reportable.

Finally, some institutional investment managers may request confidential treatment on their positions and, if the request is granted, may not have to report those positions for up to one year. If positions are reported on a delayed basis, they are not captured by the database used for this analysis.

Compliance

The positions of any institutional investment managers that fail to comply with their Form 13F are not captured in this analysis.

Thompson Database Limitations

The Thompson Financial database covers only U.S. equity positions.

Percentage of Issuers in Sample
with Eligible Investors,
by Ownership Threshold, for Various Holding Periods

TABLE 1A

All Public Issuers
(6,416 issuers)

One-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	74%	65%	59%	54%	50%
2%	69%	58%	50%	43%	36%
3%	64%	50%	39%	28%	19%
4%	59%	39%	24%	13%	6%
5%	51%	29%	14%	6%	2%
7%	37%	14%	4%	1%	0%
10%	17%	3%	0%	0%	0%

Two-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	64%	54%	48%	43%	37%
2%	59%	47%	38%	28%	19%
3%	52%	35%	22%	12%	5%
4%	44%	22%	10%	4%	1%
5%	36%	14%	5%	1%	0%
7%	23%	5%	1%	0%	0%
10%	9%	1%	0%	0%	0%

Three-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	43%	36%	31%	25%	20%
2%	38%	29%	21%	13%	7%
3%	33%	19%	9%	4%	1%
4%	25%	10%	4%	1%	0%
5%	20%	6%	2%	0%	0%
7%	12%	2%	0%	0%	0%
10%	4%	0%	0%	0%	0%

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial

Percentage of Issuers in Sample
with Eligible Investors,
by Ownership Threshold, for Various Holding Periods

TABLE 1B

Megacaps
(greater than \$50 billion: 32 issuers)

One-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	94%	94%	94%	94%	91%
2%	94%	94%	88%	75%	66%
3%	91%	81%	72%	41%	3%
4%	69%	13%	3%	0%	0%
5%	19%	0%	0%	0%	0%
7%	9%	0%	0%	0%	0%
10%	3%	0%	0%	0%	0%

Two-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	94%	94%	94%	94%	84%
2%	94%	91%	88%	47%	19%
3%	88%	47%	6%	0%	0%
4%	34%	3%	0%	0%	0%
5%	16%	0%	0%	0%	0%
7%	6%	0%	0%	0%	0%
10%	3%	0%	0%	0%	0%

Three-Year Holding Period

Ownership Threshold	Percentage of issuers with...				
	1 or more eligible shareholders	2 or more eligible shareholders	3 or more eligible shareholders	4 or more eligible shareholders	5 or more eligible shareholders
1%	81%	81%	81%	81%	72%
2%	81%	81%	75%	31%	16%
3%	78%	31%	3%	0%	0%
4%	28%	0%	0%	0%	0%
5%	6%	0%	0%	0%	0%
7%	3%	0%	0%	0%	0%
10%	0%	0%	0%	0%	0%

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial

**Number of Issuers Held
by Four Large Pension Funds,
by Ownership Threshold and Holding Period**

TABLE 2

Eligible Holdings of Four Large Pension Funds

One-Year Holding Period

Pension Fund	Ownership Threshold			Total
	1% - 2%	2% - 3%	≥ 3%	
Pension Fund A	31	9	1	41
Pension Fund B	0	0	0	0
Pension Fund C	31	14	2	47
Pension Fund D	7	0	0	7

Two-Year Holding Period

Pension Fund	Ownership Threshold			Total
	1% - 2%	2% - 3%	≥ 3%	
Pension Fund A	15	6	1	22
Pension Fund B	0	0	0	0
Pension Fund C	14	10	1	25
Pension Fund D	6	0	0	6

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial

**Number of Proxy Statements Potentially Affected,
by Issuer Market Capitalization and Holding Period**

TABLE 3

Eligible Issuer-Investor Pairs
(3% Ownership Threshold)

	Issuer Market Capitalization								
	≥ \$10B	≥ \$15B	≥ \$20B	≥ \$25B	≥ \$30B	≥ \$35B	≥ \$40B	≥ \$45B	≥ \$50B
Holding Period Requirement									
One year	799	513	351	261	217	177	126	114	93
Two years	407	255	175	127	105	85	61	56	45

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial

Eligible Issuer-Investor Pairs,
by Issuer Market Capitalization and Holding Period,
3% Ownership Threshold

TABLE 4A

One-Year Holding Period

Investor	Issuer Market Capitalization								
	≥ \$10B	≥ \$15B	≥ \$20B	≥ \$25B	≥ \$30B	≥ \$35B	≥ \$40B	≥ \$45B	≥ \$50B
Institution 1	175	118	87	66	54	44	33	30	26
Institution 2	133	89	65	52	46	38	28	25	22
Institution 3	118	81	62	47	40	34	25	23	20
Institution 4	47	37	27	21	19	16	12	12	8
Institution 5	41	24	16	10	9	7	6	4	4
Institution 6	35	21	16	11	9	8	4	4	4
Institution 7	7	7	7	6	5	5	4	3	3
Institution 8	18	14	10	9	6	5	3	3	3
Institution 9	13	7	4	3	3	3	2	2	2
Institution 10	10	8	7	4	4	2	1	1	1
Institution 11	24	17	10	6	5	4	2	2	
Institution 12	10	5	4	2	2	2	1	1	
Institution 13	12	7	6	3	2	1	1	1	
Institution 14	8	7	4	1	1	1	1	1	
Institution 15	1	1	1	1	1	1	1	1	
Institution 16	1	1	1	1	1	1	1	1	
Institution 17	4	4	3	2	1	1	1		
Institution 18	11	8	4	4	2	1			
Institution 19	7	5	3	2	1	1			
Institution 20	4	1	1	1	1	1			
Institution 21	2	1	1	1	1	1			
Institution 22	7	4	2	2	1				
Institution 23	4	4	1	1	1				
Institution 24	4	2	1	1	1				
Institution 25	3	1	1	1	1				
Institution 26	9	4	1	1					
Institution 27	6	4	1	1					
Institution 28	6	3	1	1					
Institution 29	15	6	1						
Institution 30	5	3	1						
Institution 31	1	1	1						
Institution 32	1	1	1						
Institution 33	7	3							
Institution 34	4	2							
Institution 35	8	1							
Institution 36	3	1							
Institution 37	3	1							
Institution 38	2	1							
Institution 39	2	1							
Institution 40	1	1							
Institution 41	1	1							
Institution 42	1	1							
Institution 43	1	1							
Institution 44	1	1							
Institution 45	1	1							
Institution 46	1	1							
Institution 47	3								
Institution 48	2								
Institution 49	2								
Institution 50	2								
Institution 51	1								
Institution 52	1								
Institution 53	1								
Institution 54	1								
Institution 55	1								
Institution 56	1								
Institution 57	1								
Institution 58	1								
Institution 59	1								
Institution 60	1								
Institution 61	1								
Institution 62	1								
Total	799	513	351	261	217	177	126	114	93

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial

**Eligible Issuer-Investor Pairs,
by Issuer Market Capitalization and Holding Period,
3% Ownership Threshold**

TABLE 4B

Two-Year Holding Period

Investor	Issuer Market Capitalization								
	≥ \$10B	≥ \$15B	≥ \$20B	≥ \$25B	≥ \$30B	≥ \$35B	≥ \$40B	≥ \$45B	≥ \$50B
Institution 1	132	92	68	52	45	38	30	28	25
Institution 2	68	45	34	26	23	18	14	13	12
Institution 3	33	20	14	9	8	6	5	3	3
Institution 4	5	5	5	4	3	3	3	3	3
Institution 5	11	8	7	6	4	3	1	1	1
Institution 6	9	5	3	2	2	2	1	1	1
Institution 7	18	11	7	5	4	4	2	2	
Institution 8	9	5	4	2	1	1	1	1	
Institution 9	8	7	4	1	1	1	1	1	
Institution 10	8	4	3	1	1	1	1	1	
Institution 11	1	1	1	1	1	1	1	1	
Institution 12	1	1	1	1	1	1	1	1	
Institution 13	7	5	5	3	3	1			
Institution 14	8	6	3	3	2	1			
Institution 15	7	5	3	2	1	1			
Institution 16	7	1	1	1	1	1			
Institution 17	2	1	1	1	1	1			
Institution 18	1	1	1	1	1	1			
Institution 19	6	4	2	2	1				
Institution 20	3	3	1	1	1				
Institution 21	4	2	1	1					
Institution 22	4	2	1	1					
Institution 23	2	2	1	1					
Institution 24	8	4	1						
Institution 25	4	2	1						
Institution 26	1	1	1						
Institution 27	1	1	1						
Institution 28	7	3							
Institution 29	3	1							
Institution 30	2	1							
Institution 31	2	1							
Institution 32	2	1							
Institution 33	1	1							
Institution 34	1	1							
Institution 35	1	1							
Institution 36	1	1							
Institution 37	5								
Institution 38	3								
Institution 39	2								
Institution 40	2								
Institution 41	1								
Institution 42	1								
Institution 43	1								
Institution 44	1								
Institution 45	1								
Institution 46	1								
Institution 47	1								
Total	407	255	175	127	105	85	61	56	45

Note: Based on analysis of 6,416 U.S.-based issuers with common equity trading on the NYSE, AMEX, NASDAQ, or ARCA markets as of 12/31/08.

Source: Thomson Financial