

MEMO# 27182

April 15, 2013

Draft ICI Letter on Petition for Rulemaking to Shorten Reporting Deadline under Section 13(f) of the Exchange Act

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TO: SECURITIES OPERATIONS ADVISORY GROUP RE: DRAFT ICI LETTER ON PETITION FOR RULEMAKING TO SHORTEN REPORTING DEADLINE UNDER SECTION 13(F) OF THE EXCHANGE ACT

As you may be aware, NYSE Euronext, along with the Society of Corporate Secretaries and Governance Professionals and the National Investor Relations Institute, submitted a petition for rulemaking to the SEC requesting that the reporting rules under Section 13(f) of the Securities Exchange Act of 1934 be amended to shorten the current reporting deadline. [\[1\]](#) Specifically, the petition requests that the current requirement of filing reports on Form 13F with the SEC within 45 days after the last day of each calendar quarter be reduced to two days. The petition also encourages the SEC to take action to increase the frequency of Form 13F reporting from quarterly to monthly.

Attached for your review is ICI's draft comment letter on the petition. Please provide any comments on the draft letter to Ari Burstein by email at aburstein@ici.org or by phone at 202-371-5408 no later than COB April 17.

The petition sets forth several arguments why the reporting deadline should be shortened. First, the petition states that the length of the current reporting period keeps material information from reaching investors and public companies on a timely basis. Second, the petition argues that the objectives underlying Section 13(f) support reducing the delay period. Third, the petition states that the arguments in support of retaining a 45-day delay period are unpersuasive. Finally, the petition states that a substantial reduction in the 45-day delay period would align Rule 13f-1 with public company governance best practices.

The draft letter responds to the petition's arguments and strongly opposes the petition. The most significant aspects of the draft letter are summarized below.

Reducing the Current 45-Day Delay Period Would Harm Fund Shareholders

The draft letter states that reducing the timeframe for reporting would expand opportunities for speculators and other professional traders to exploit the information in Form 13F reports in ways that would be detrimental to fund shareholders, particularly through frontrunning fund trades. The draft letter adds that reducing the timeframe for reporting also would make it easier to obtain, for free, the benefits of fund research and investment strategies that fund shareholders pay for, i.e., “free riding.”

The draft letter notes that the petition touts advancements in technology as a reason for reducing the delay period. The draft letter states that these same advancements, however, have greatly increased the speed and ease with which the information in Form 13F reports may be accessed and packaged in ways that facilitate predatory trading practices. In addition, while funds have been concerned about frontrunning for years, that concern has increased as technology has advanced allowing better identification of, and execution against, fund trading strategies.

The Confidential Treatment Process Is Not an Adequate Substitute for Sufficiently Delayed Reporting

The draft letter states that SEC staff potentially could address many of the concerns regarding the petition by granting confidential treatment to Forms 13F in appropriate circumstances. The draft letter notes, however, that reducing the timeframe for reporting likely would increase significantly the number of requests for individual grants of confidential treatment. In addition, it is a more efficient and effective use of the resources of both investment managers and the SEC staff to maintain the current delayed reporting deadline rather than relying on the resource-intensive, time-consuming confidential treatment process to provide adequate protection for investment managers’ trading strategies consistent with Section 13(f).

Shortening the Reporting Deadline Would Create Operational Concerns

The petition states that the original reason the SEC cited for providing institutional investment managers with a 45-day delay period is no longer valid, i.e., a shorter time requirement would have created an undue burden, and that technological advances in recordkeeping and reporting systems warrant a shorter delay period. The draft letter states that shortening the reporting deadline would still create operational concerns. Specifically, such a compressed timeframe may not allow managers sufficient time to aggregate, verify, and file the information required by Form 13F and run the proper legal and compliance checks necessary for the filing of Form 13F. In addition, a compressed timeframe would likely increase costs for managers.

The Petition’s Arguments Based on the Objectives Underlying Section 13(f) Do Not Withstand Scrutiny

The petition quotes language from the SEC release adopting Rule 13f-1 regarding uniformity of reporting standards as support for shortening the 45-day reporting period; it points out that “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” The draft letter states that the implication that a shorter reporting period would be consistent with the history of Section 13(f) is erroneous. In addition, the petition’s suggestion that the SEC make the reporting period under Rule 13f-1 “more similar” to that

under other SEC rules with shorter reporting periods fails to recognize that different reporting requirements serve different purposes and that there are valid policy and practical reasons for having reporting periods that vary.

Issuers Have Alternative Means to Communicate with Their Shareholders

The petition states that for public companies, the 45-day delay period impedes their ability to identify and engage with their shareholders in a timely manner, including their ability to consult with shareholders regarding “say on pay,” proxy access and other key corporate governance issues. The draft letter states that while ICI appreciates issuers’ willingness to engage with investors on these important matters, Form 13F reporting is not the appropriate tool for enhancing communication between issuers and their shareholders. The draft letter states that issuers should use the SEC’s well established set of shareholder communications rules for these purposes and notes that the SEC already has begun to examine how these rules could be modified to make it easier for issuers to identify their beneficial owners and to communicate directly with them.

Increasing the Frequency of Reporting Would Harm Fund Shareholders

The petition states that while it is focused on addressing the length of the reporting delay under Rule 13f-1, the request is made in the context of the SEC’s existing authority under Section 13(f), which provides that long-position reporting under Section 13(f) may not be required for periods shorter than one quarter. The petition, nevertheless, encourages the SEC to raise with appropriate Congressional oversight committees the possibility of increasing the frequency of Form 13F reporting, such as requiring monthly reporting of positions. The draft letter states that increasing the frequency of reporting raises the same concerns as those described above with respect to reducing the reporting delay, i.e., the frontrunning of fund trades and free riding of fund strategies to the detriment of fund shareholders. The draft letter therefore strongly opposes the pursuit of such a legislative change.

Ari Burstein
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[Attachment](#)

endnotes

[1] The petition can be found on the SEC’s website at <http://www.sec.gov/rules/petitions/2013/petn4-659.pdf>.