



Rulemaking Petition Calls for Modernization of Section 13 Reporting Rules

Posted by Martin Lipton, Wachtell, Lipton, Rosen & Katz, on Friday February 8, 2013

Editor's Note: [Martin Lipton](#) is a founding partner of Wachtell, Lipton, Rosen & Katz, specializing in mergers and acquisitions and matters affecting corporate policy and strategy. This post is based on a Wachtell Lipton memorandum by Mr. Lipton, [Theodore N. Mirvis](#), [Eric S. Robinson](#), [Adam O. Emmerich](#), [William Savitt](#), and [Adam M. Gogolak](#).

NYSE Euronext, the Society of Corporate Secretaries and Governance Professionals and the National Investor Relations Institute have jointly filed a [rulemaking petition](#) with the SEC, seeking prompt updating to the reporting rules under Section 13(f) of the Securities Exchange Act of 1934, as well as supporting a more comprehensive study of the beneficial ownership reporting rules under Section 13. The petitioners urge the SEC to shorten the reporting deadline under Rule 13f-1 from 45 days to two business days after the relevant calendar quarter, and also suggests amending Section 13(f) itself to provide for reporting on at least a monthly, rather than quarterly, basis, to correspond with Dodd-Frank's mandate for at least monthly disclosure of short sales. We applaud the petitioners for urging the SEC to modernize Section 13's reporting rules, both with respect to Section 13(f) and more generally.

As the petition notes, a core purpose of Section 13(f) is to facilitate "rapid dissemination of [] institutional disclosure information to the public." However, as detailed in the petition, the current 45-day delay period impedes companies and their shareholders from promptly identifying the company's institutional investors, impedes shareholder/public company engagement, can result in stale disclosures of institutional shareholdings and is subject to abuse by sophisticated investors who wish to accumulate shares on a stealth basis, contrary to the fundamental disclosure purposes underlying the statute. As noted in the petition, the 45-day reporting period—implemented over thirty years ago—was borne of practical considerations that are entirely antiquated in light of the increased sophistication of institutional investors and advances in information technology. There is no need today for a 45-day reporting delay, which only serves to undermine the fundamental purposes of the regulatory scheme, market transparency and engagement between public companies and their shareholders.

The petitioners also voice their strong support for a broader SEC rulemaking project concerning the beneficial ownership rules of Section 13, to ensure that the rules are “up-to-date ‘in light of modern investment strategies and innovative financial products.’” (Quoting SEC Chairman Mary Schapiro.) As we have said before, we agree that such a rulemaking project is imperative. Changing market conditions and practices have rendered a number of Section 13’s reporting rules obsolete and subject to exploitation by sophisticated market participants. We have formally petitioned the SEC and set forth detailed proposals for the modernization of the Section 13(d) reporting regime (see our memos of [March 2011](#), [April 2011](#) and [March 2008](#) and our forthcoming paper in the [Harvard Business Law Review](#)). We continue to believe that immediate SEC action is both necessary and overdue to further the principles of market transparency and fairness that are the foundation of Section 13. We strongly encourage U.S. public companies and all market participants to support the 13f-1 rulemaking petition and our own 13(d) rulemaking petition.