NATIONAL INVESTOR RELATIONS INSTITUTE

The Case for 13F Reform

The National Investor Relations Institute (NIRI), whose members include 3,300 investor relations professionals who represent over 1,600 public companies and $9 trillion in stock market capitalization, is pleased to support the "Capital Markets Engagement and Transparency Act of 2019," which would modernize the Form 13F ownership disclosure rules.

In 1975, Congress passed Section 13(f) of the Securities Exchange Act to increase the public availability of information regarding the securities held by institutional investors. Lawmakers believed that these institutional disclosures would increase investor confidence in the integrity of U.S. capital markets. Current Securities and Exchange Commission rules require institutional investment managers to disclose their share ownership positions within 45 days after the end of each calendar quarter through Form 13F filings, with an exception made for those that petition the SEC to delay these disclosures on the basis of confidentiality. Unlike public companies in the U.K. and other markets, U.S. companies do not have a share registry that lists their investors, so U.S. issuers have relied upon the data contained in institutional 13F filings to determine which institutions own their shares and the size of their positions.

Since the passage of the Dodd-Frank Act of 2010, U.S. companies have faced a surge in requests from investors for engagement on corporate governance, executive compensation, long-term strategy, and other important issues. U.S. issuers now operate in an environment of great transparency governed by federal regulations, as well as stock exchange rules, but the 13F disclosure rules that apply to institutional investors have not been updated since the 1970s. These outdated reporting rules are a significant impediment to greater corporate-investor engagement, because companies don't have timely information on their investors' long and short positions when trying to allocate scarce CEO or director time among competing investor requests for one-on-one meetings or calls.

In 2013, NIRI, the Society for Corporate Governance, and the NYSE Group petitioned the SEC to shorten the 13F reporting deadline from 45 days to two business days after the end of the quarter. The SEC has not acted on this petition. In a 2018 NIRI survey, investor relations officers at public companies expressed overwhelming support (97 percent) to reduce the 45-day filing period. Eighty-six percent said they believe it should be 15 days or less, while 87 percent said they would support monthly reporting.

When receiving requests from an institutional investor who purports to be significant shareholder, a company must rely on old 13F filings or take that representation on faith, only to learn later that the investor may have overstated its position. In NIRI's 2018 survey, 46 percent of respondents reported that investors had misrepresented their positions to gain a meeting with C-suite; while another 40 percent suspect this has happened.

Neither investors nor public companies are well served by the current quarterly reporting frequency. Under the current 13F regime, much of the ownership information in Form 13F filings is out-of-date by the time that investment managers make those quarterly filings. For some public companies, a majority of their shares may change hands during the 135-day period that includes the last calendar quarter and the 45-day reporting window. It is not effective public policy to require investment managers to bear the expense of making disclosures that include obsolete data with limited value to public companies and other investors.

The outdated 13F rules (along with archaic 13D rules) also make it more difficult for companies to learn of activist hedge funds that may be secretly amassing a large position in preparation for a proxy contest. For instance, a hedge fund could buy up to a 4.9 percent stake in a public company on January 2, and the company would not learn of this major acquisition until May 15.

The lack of ownership transparency is of particular concern to smaller issuers that cannot afford to pay for stock surveillance firms that analyze trading patterns and try to determine which investors are buying or selling shares.

Congress already has expressed a clear preference for the monthly reporting of ownership positions, along with a 15-day reporting window. Section 929X of the Dodd-Frank Act, which the SEC has not yet implemented, directs the agency to promulgate rules obligating investment managers to publicly report *short position* activity at a minimum of once every month (with no more than a 15-day reporting period). NIRI believes Congress should take a similar approach to the disclosure of long positions.

Accordingly, NIRI asks lawmakers to support a draft bill, the "Capital Markets Engagement and Transparency Act of 2019." This bill would change the Form 13F reporting frequency to monthly and shorten the reporting period to 15 days. In recognition of the greater compliance burden that small investment managers would face under a new monthly reporting regime, this draft bill calls for raising the current $100 million threshold (which is based on the total securities that the manager has investment discretion over) for 13F reporting and indexing that threshold to inflation. This provision would ease the burden on smaller investors, while ensuring public companies have more timely and frequent information about the positions of large and mid-size institutional investors, which are the most likely shareholders to request engagement

with companies. This draft bill also calls for the SEC to study how it handles requests for confidential treatment from investment managers.

Summary of the "Capital Markets Engagement and Transparency Act of 2019"

Section 2 amends section 13(f) of the Securities Exchange Act of 1934 in the following manner:

- The threshold for institutional investment managers to file a Form 13F report would be increased from $100 million to $450 million in 13(f) securities (which include shares in U.S.-exchange traded stocks), to reflect a Consumer Price Index (CPI) adjustment from 1976 to 2019. According to the Bureau of Labor Statistics, the CPI for All Urban Consumers increased by an annual average of 3.66% since 1975.

- The new threshold of $450 million would be adjusted every 5 years to reflect changes in the CPI for All Urban Consumers, as calculated by the Bureau of Labor Statistics.

- Form 13F filings would be made within 15 days after the end of each calendar month. Current law requires Form 13F filings to be made within 45 days after the end of each calendar quarter.

- All filers would be required to disclose long, short, and derivative positions in a Form 13F report. All positions would be aggregated together (not netted) to determine if the threshold is met.

Section 3. SEC Study on Confidential Treatment of Form 13F Reports

The Securities and Exchange Commission (SEC) would be required to conduct a study to evaluate its criteria and standards in granting confidential treatment requests by Form 13F filers. After submitting a report on this study, the SEC would be required to initiate a rulemaking proceeding to improve the transparency of equity ownership positions by reducing the use of confidential treatment in filing Form 13F reports.

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