STANY
The Security Traders Association of New York, Inc.

71 Broadway, 2K
New York, NY 10006
P. 212.344.0410
F. 212.943.8478
www.stany.org

KIMBERLY UNGER, ESQ.
Executive Director

April 10, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File: 4-659; Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934

Dear Ms. Murphy:

The Security Traders Association of New York, Inc.[1] ("STANY") appreciates the opportunity to comment on the petition for rulemaking under Section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") submitted by the NYSE Euronext ("NYSE"), together with two trade associations, the Society of Corporate Secretaries and Governance Professionals and the National Investor Relations Institute (collectively referred to as the "Petitioners"). STANY strongly opposes the petition to shorten the reporting deadline applicable to institutional investment managers under Exchange Act Rule 13(f)-1 from 45 calendar days to two business days after the calendar quarter end.

STANY membership is composed of individuals who are employed as securities traders or whose employment indirectly supports the trading of securities. STANY does not represent a single business or business model, but rather provides a forum for professionals employed by institutions, broker-dealers, hedge funds, ECNs, ATSs, market makers and exchanges, to share their unique perspectives on issues facing the securities markets. Because our members represent differing business models, their opinions on, and views of, regulatory structure often differ. Nevertheless, STANY and its members strive to promote their shared interest in efficient, liquid markets, and their concern for investor protection. In addressing the instant Petition, STANY has sought, and relied upon, the opinions and judgment of those members most impacted by the proposed changes- institutional asset managers. While certain other contingents of STANY's membership may benefit from the proposed changes, as an organization we take the view that the contemplated changes will not be beneficial to investors or the markets and therefore oppose the changes.

<u>Background and Summary</u>

The proposed shortening of the 13(f) reporting deadline from 45 calendar days to 2 business days would significantly increase the opportunities for predatory practices and reverse engineering of positions that could be detrimental to the interest of investment company shareholders and provide unfair advantages to certain other market participants. While we appreciate that issuers may be under pressure to improve communication with shareholders, we believe that the potential harm from the proposed change to 13(f) filing deadlines far outweighs any perceived benefits articulated by the Petitioners.

[1] STANY is the voice of the trader in the New York metropolitan area and represents approximately 1,000 individuals who are engaged in the trading of securities. As such, we are uniquely qualified to discuss proposed rules and regulations affecting trading. STANY is the largest affiliate of the Security Traders Association ("STA"), a multinational professional association that is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics and marketplace integrity and that support education of market participants, capital formation and marketplace innovation.

Pursuant to Rule 13(f)-1(a)(1), every institutional investment manager ("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.[2] Currently, paragraph (a)(1) of Rule 13(f)-1 requires managers to file reports on Form 13F with the Securities and Exchange Commission (the "SEC" or "Commission") within 45 days after the last day of each calendar quarter. Petitioners seek to have that filing deadline shortened to two business days after the last day of each calendar quarter.

A two business day deadline to file Form 13Fs would be impractical, onerous and unwise. First, reporting within 2 business days is inconsistent with T+3 settlement of securities transactions. Second, the suggestion that two days is an appropriate deadline for disclosure of account holdings shows a lack of understanding of the investment process used by investment managers. Flexibility is required by managers especially when trading less liquid securities, securities of small and mid-sized enterprises and large blocks of securities.

Managers have also expressed concerns that a two-day reporting requirement will create significant additional reporting burdens especially for managers of small funds. Reporting systems such as the one governed by Section 13(f) can involve significant costs to institutional investors. Even with technological advances, two business days is likely to be insufficient to aggregate, verify, and submit the information required on Form 13Fs.

Along with the technological changes over the last three decades, the number and frequency of public and regulatory filings requirements on investment companies and their managers has increased substantially since the implementation of Rule 13(f)-1.The burden on fund managers has increased along with technological changes. So while it may take less time to file a report, the burdens, felt especially by managers of small funds, have also significantly increased over time.

Among the arguments advanced by the Petitioners in support of a two day filing deadline is the Commission's general trend towards substantially shorter reporting periods, which have been supported by improvements in, and widespread usage of, information technology. By way of examples, Petitioners note that 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. In the context of this information, contracted deadlines may make sense. However, the information contained in these public filings and the public policies served by these disclosures are substantially different than the information or policy rationales for 13(f) disclosures.

Form 4 is used to track insider activity and insider trading. Form 8K is used to provide information to shareholders of material events – information of such a nature that there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. The substantial policy issues requiring the "immediate" filing of this information is obvious. The same cannot be said for information about which managers' accounts are beneficial owners of a company's stock at quarter end.

We certainly do not mean to imply that the information contained in 13(f) filings is not of "value" to the public. On the contrary, it is because of the "value" of this information that the Commission should maintain the status quo. The release of information contained in 13(f) filings on a mere two-day delay may be exploited by speculators, hedge funds, proprietary trading desks, and other professional traders in ways that are potentially harmful to shareholders. We believe that this information can be misused by unscrupulous traders to "front run" large trades and reverse engineer positions to the detriment of portfolio managers and the clients for whom they make investment decisions.

Managers selling or buying large positions often do so over a number of days—sometimes necessitated by the lack of liquidity, and at other times as a strategy to avoid information leakage and market impact—which can be significant when moving large blocks of stock. As the Commission has often recognized, the institutional community is legitimately concerned about the difficulties inherent in moving blocks of stock and doing so with minimal impact.

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[2] *See* Exchange Act Rule 13(f)-1 (17 C.F.R. 240.13(f)-1) and Form 13(f) under the Exchange Act.

Managers' primary obligations are to the investors who rely on their investment decisions and entrust money to their care. Information about active and legitimate investment strategies by managers is proprietary and highly confidential and should remain so.

To suggest that managers structure their acquisitions and dispositions around filing deadlines minimizes the significant investment and money management decisions made by managers. Moreover, to imply that this comes at the expense of other investors who trade "without the benefit of knowing the size and scope of institutional holdings" suggests that the Petitioners condone and encourage piggy-backing on the strategy of managers.

Just because it may be feasible to provide information more expeditiously does not mean that it would be in the best interests of the investing public to do so. The information may be valuable to unscrupulous investors, or to hedge funds, professional traders and others who wish to follow or mimic managers' investment decisions, but their actions rob those investors who pay for and rely on managers' experience, research, and knowledge of the markets to make informed decisions. As noted by Petitioners, institutional portfolio managers have taken an increasingly significant role in the market; therefore, a greater number of investors are likely to be negatively impacted by the more proximate release of information contained in 13(f) filings. Investor confidence would be negatively impacted if managers making decisions for investors are required to reveal their investment and trading strategies to "free loaders."

Moreover, to protect their clients, managers may alter their trading strategies if they were required to disclose beneficial ownership within two days of quarter end. The result would be more obfuscation and unusual market swings, which is contrary to the public interest.

We do not believe that it was the intention of the Commission or Congress in fashioning 13(f) filing requirements to change the behavior of managers. Section 13(f) of the Exchange Act was adopted by Congress as part of the Securities Acts Amendments of 1975.[3] The Commission's 1979 release mandating quarterly (as opposed to annual) Section 13(f) reporting clearly demonstrates the central purpose of Section 13(f):

> 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.[4]

The Petitioners are dismissive of the potential harmful impact to investors of the release of information about managers' holdings. We believe that this is shortsighted. In discussion with STANY's buy-side members, the anxiety that sophisticated predatory traders will take advantage of this information is real. These concerns are not merely the fantasy of paranoid fund managers, but legitimate apprehensions in the face of advanced technology and services that seek to capitalize on holdings information for the sole purpose of taking advantage of it. For example, there are numerous services that sell stock selections to subscribers based on analysis of what mutual funds and other institutional investors are buying at the moment. The people and firms that buy or otherwise use this information, do so hoping for some market advantage. Of course, the ability to "copycat" or mimic managers' market decisions is somewhat limited by the current 45 day lag in reporting. We think this is a good thing. We do not believe that it is in the best interests of investors, investor confidence or issuers to promote a policy of providing this information to those who could take advantage of it to the potential detriment of fund shareholders who use investment managers.

The Commission recognized that the disclosure of portfolio holdings by mutual fund investors could cause potential harm to mutual fund investors when in 2004, the Commission adopted a requirement that investment companies disclose their full portfolio holdings quarterly with a 60-day delay, stating:

[3] Pub. L. No. 94-29, 89 Stat. 97 (1975).

[4] Exchange Act Release No. 15461 (Jan. 5, 1979), 44 FR 3033, at 3033-3034 (the "1979 Adopting Release").

> We have determined to adopt the proposed requirement for quarterly disclosure of portfolio holdings with a 60-day delay. We are not requiring more frequent portfolio disclosure, or a shorter delay, because we take seriously concerns that frequent portfolio holdings disclosure and/or a shorter delay for the release of this information may expand the opportunities for predatory trading practices that harm fund shareholders.[5]

By way of example, consider a fund holding 8% of a company's shares wherein the fund manager decides to liquidate the fund's holdings in that company. In the exercise of prudence, the manager would not want to sell off the position at once, but would prefer to liquidate the position over time so as to avoid negatively impacting prices. Currently, that manager would potentially have 45 days to spread out sales before having to disclose to the public that the fund had disposed of the holdings. If however, during the sales period the manager's disclosure showed a sale of say 3% of the company's stock, the street could infer a sell-off and speculate that the fund intended to sell the remainder of their stake in the company. This could create downward pressure on the price of the stock to the detriment of both the company and shareholders. This disclosure, or what "the street" may infer from it, could create an unfair market for larger shareholders.

For the reasons discussed above, STANY strongly oppose the Petition to shorten reporting deadlines under Rule 13(f)-1.

<u>STANY suggests that the Commission extend Section 13(f) filing requirements to include OTC traded securities</u>

While STANY opposes the Petitioners' suggested changes to Section 13(f) filing deadlines, we would suggest that the Commission expand the scope of 13(f) reporting to all OTC equity securities with a FINRA symbol. The principles which led Congress to adopt Section 13(f) of the Exchange Act mandating managers' disclosures of holdings in "13(f) securities" apply equally to managers' holding in securities of companies traded on the OTC Markets. We believe that the creation in the Commission of a central repository of historical and current data about investment activities of institutional investment managers in OTC equity securities would be valuable to the investing public as well as to issuers of those securities. Currently some managers do provide this information to issuers on a voluntary basis; others do not. Therefore, the information that issuers have is often incomplete and confusing. This could easily be solved by requiring the inclusion OTC equity securities in 13(f) filings.

STANY is available to assist and consult with the Commission in any way that it deems helpful. Please do not hesitate to call or e-mail us at 212.344.0410 or kimu@stany.org with any questions about the comments and opinions in this letter.

Respectfully submitted,

Kimberly Unger, Esq.
CEO and Executive Director

[5] Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004)