

What the Institutional Investment Manager Needs to Know About SEC Reporting under Section 13(f)

By Cory White¹ and Blake Brockway²

INTRODUCTION

Since the mid-1970's institutional investors have been required to report their security holdings to the public under Section 13(f) of the Securities Exchange Act.³ The measure was initially enacted to increase public confidence in the United States securities market, and has evolved into a useful tool for the U.S. investor. Many media outlets now report institutional holdings, and some industry professionals have even suggested that individual investors can profit from mimicking the holdings of institutional investors.⁴ Despite its utility, Section 13(f) has been neglected by the U.S. Securities and Exchange Commission (the "Commission"). On September 27, 2010, the Commission's Office of Inspector General released a detailed review of the agencies practices and procedures for enforcing the Section 13(f) Reporting Requirements.⁵ The report concluded that several improvements were needed in order to fulfill the Commission's statutory obligation to provide useful and reliable data.⁶ Among the other things, the OIG report recommended that the Commission designate a department to review the completeness and accuracy of Form 13F.⁷

¹ Cory White is a 2009 graduate of DePaul University College of Law. He is currently a managing member at the law firm Hafelein | White, LLC where he focuses his practice on securities compliance.

² Blake Brockway is a 2009 graduate of DePaul University College of Law. He has worked in various compliance environments, previously serving as a legal intern for the U.S. Securities and Exchange Commission.

³ Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978).

⁴ What Hedge Fund Managers Know About Making Money, available at <http://www.marketwatch.com/story/what-hedge-fund-managers-know-about-making-money-2011-03-25>

⁵ Office of Inspector General, Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 (Securities and Exchange Commission, September 27, 2010).

⁶ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 4-5.

⁷ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 9.

In the wake of the OIG report the Commission will be increasing its review of Form 13F filings as well as enforcement actions against institutional investment managers that are failing to meet the Section 13(f) reporting obligations. Current filers could also face audits, reviews, or enforcement actions as the Commission implements procedures to substantively review Form 13F Holding Reports for the first time. As the securities industry endures the regulatory upswing resulting from the recent recession, flash crash, and other market events and the Commission prepares to expand its review of Section 13(f) reporting, now is the ideal time to review the institutional investment manager reporting requirements. This paper is intended to serve as a refresher for current reporting managers as well as a guide for first time filers. The paper is organized into three substantive sections. The first section provides a brief summary of the history, purpose, utility of Section 13(f) and a detailed overview of the reporting requirements. This section also reviews the definition for the key terms used in the statute, the reporting threshold, and when and how to report. The second section reviews the possible penalties for failing to file Form 13F and discusses a recent enforcement action that resulted in a \$100,000 penalty for an institutional investment manager that willfully failed to file Form 13F. The third section provides technical details for completing the Form 13F Information Table and requesting confidential treatment of certain holdings information. Finally, sample forms and templates are provided that should be useful for reporting managers.

SECTION I – OVERVIEW OF SECTION 13(F) REPORTING

A) An Overview of the History, Purpose, and Utility of Section 13(f)

Section 13(f) was enacted as a part of the Securities Acts Amendments of 1975 with the intent “to create in the Commission a central repository of historical and current data about the

investment activities of institutional investment managers.”⁸ The institutional investment reporting requirement outlined in Section 13(f) was adopted to achieve two objectives.⁹ The first objective was to improve the availability of factual data to evaluate the influence, impact, and public policy implications of institutional investment managers on the securities markets.¹⁰ The second objective was to establish a uniform reporting standard and centralized database of institutional holdings that is gathered, processed and disseminated by the Commission.¹¹

Congress believed that collecting and disseminating data about institutional investment managers’ holdings would simulate a higher degree of confidence in the integrity of the U.S. securities markets and would be useful to regulatory bodies in fulfilling their responsibilities.¹² President Gerald Ford echoed these sentiments and specifically referenced the reporting requirements outlined in Section 13(f) when he signed the Securities Act of 1975 into law.

Public confidence is a vital ingredient if our capital markets are to continue to attract a wide variety of investors. Though large institutions have become increasingly active as owners and traders of securities, individuals still represent the backbone of the American capital system. This act provides important new safeguards which will help insure public trust in the securities markets. Among these safeguards are new rules for brokers' financial strength and accountability. The act imposes new restrictions on "self-dealing" to eliminate a potential conflict of interest and deny institutions a special advantage over individual investors. *The*

⁸ Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978).

⁹ Review of the SEC’s Section 13(f) Reporting Requirement, Report No. 480 at 1(citing Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978)).

¹⁰ Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978).

¹¹ Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978).

¹² Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 94-75 at 78 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 261. See also Division of Investment Management: Frequently Asked Questions About Form 13F (Securities and Exchange Commission, May 2005), Question 1 <http://www.sec.gov/divisions/investment/13ffaq.htm> (“Congress believed that this institutional disclosure program would increase investor confidence in the integrity of the United States securities markets”).

*act further requires periodic disclosure by institutional investors of their holdings and transactions in securities.*¹³

Institutional holdings reports are currently used by regulators, academics, and industry participants.¹⁴ The Commission has identified several uses for the information reported pursuant to Section 13(f). Commission Economists utilize Form 13F data to analyze holding information, formulate penalty recommendations, and conduct valuation comparisons.¹⁵ Regulators also utilize Form 13F academic research to make informed rule-making decisions.¹⁶ In fact, the Commission indicated that it utilized research based on institutional holdings reports while formulating the recently adopted Proxy Access rules adopted under the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁷ Media outlets utilize Form 13F to report institutional ownership of publicly traded companies,¹⁸ and investment professionals utilize this information to glean market intelligence. The legislative history, purpose, and uses of Form 13F can be helpful in understanding the sometimes complicated statute and corresponding rules.

B) Overview of the Section 13(f) Reporting Requirements

Section 13(f) requires every institutional investment manager that exercises investment discretion with respect to accounts holding an aggregate fair market value of at least \$100,000,000 in Section 13(d)(1) securities to file reports in such form, for such periods, and at such times as the Commission may prescribe by rule.¹⁹ Under the statute, the reports must include at least the name of the issuer, title of the class, CUSIP number, number of shares or

¹³ Gerald R. Ford: Statement on Signing the Securities Acts Amendments 1975, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=4970#ixzz1GQuyvDWr> (emphasis added).

¹⁴ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 7.

¹⁵ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 7-8.

¹⁶ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 7.

¹⁷ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 8.

¹⁸ See e.g. MSN Money Ownership, Institutional Ownership, 5% Ownership, available at <http://moneycentral.msn.com/ownership>

¹⁹ 15 U.S.C. § 78m (f)(1).

principal amount, aggregate fair market value, and voting authority for each equity security held on the last day of the reporting period.²⁰ Section 13(f) also requires the reports to be filed for periods not longer than one year or shorter than one quarter.²¹

In order to fulfill the requirements of Section 13(f) the Commission adopted Rule 13f-1.²² Rule 13f-1 specifies the reporting periods and other procedures for filing Form 13F. The rule requires institutional investment managers to file Form 13F within 45 days after the last day of the calendar year that it first reaches the \$100,000,000 reporting threshold and within 45 days of the last day of the first three calendar quarters of the subsequent calendar year.²³ The Commission also adopted Form 13F as a standardized report for institutional investment managers.²⁴

The terms “institutional investment manager” and “investment discretion” play an important role in determining whether the Section 13(f) reporting requirements apply to a specific investment manager. Importantly, applicability of Section 13(f) does not turn on whether or not the investment manager is deemed an investment advisor under Section 202(a)(11) of the Investment Advisors Act. Additionally, reporting under any other Section of the federal securities laws does not alleviate the need to report under Section 13(f) if the reporting requirements are met.

²⁰ 15 U.S.C. § 78m (f)(1).

²¹ 15 U.S.C. § 78m (f)(1).

²² 17 C.F.R. § 13f-1(a).

²³ 17 C.F.R. § 13f-1(a) See also Division of Investment Management Frequently Asked Questions About Form 13F, Question 28. (noting that an institutional investment manager should file its first Form 13F for the December quarter for the calendar during which it first reaches the \$100 million filing threshold, and will then need to submit filings for the March, June, and September quarters of the following calendar year, even if the market value of its Section 13(f) securities falls below the \$100 million level)

²⁴ 17 C.F.R. § 249.325.

a) Determination of Institutional Investment Manager Status

Section 13(f)(5)(A) states, “the term ‘institutional investment manager’ includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the accounts of another person.”²⁵ The Commission has clarified that an institutional investment manager is either (1) an entity that invests in, or buys and sells securities for its own account; or (2) a natural person or an entity that exercises investment discretion over the account of any other natural person or entity.²⁶ In the first category, any entity that manages and has investment discretion over its own securities accounts (also referred to as “investment accounts” throughout) is considered an institutional investment manager, including corporations, banks, and pension funds that manage their own portfolios and any other entity that manages its own investments.²⁷ Importantly, this category of institutional investment manager does not include natural persons who buy and sell securities for their accounts. In the second category, both natural persons and entities can qualify as institutional investment managers if they manage and exercise investment discretion over the securities accounts of any other person, including other entities.²⁸ Broker-dealers, proprietary trading firms, investment advisors, hedge funds and others that manage the accounts of others will be considered institutional investment managers under Section 13(f). Importantly, the definition of institutional investment manager is not pinned to the value determination that triggers the reporting requirement, i.e. whether or not someone is considered an institutional investment manager is not dependent on the collective monetary value of the securities accounts managed.

²⁵ 15 U.S.C. § 78m (f)(5)(A).

²⁶ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 3.

²⁷ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 3.

²⁸ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 3.

b) Determination of Investment Discretion

In order to trigger the reporting requirement under Section 13(f), the institutional investment manager must exercise investment discretion over investment accounts that hold more than \$100 million of Section 13f securities.²⁹ Rule 13f-1 states that “investment discretion” shall have the meaning set forth in Section 3(a)(35) of the Securities Exchange Act (“Act”).³⁰ Under the Act, an institutional investment manager exercises investment discretion over an account if, directly or indirectly, such person is (1) authorized to determine what securities shall be purchased or sold by or for the account; (2) makes decisions as to what securities shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions; or (3) otherwise exercises such influence with respect to the to the purchase and sale of securities by or for the account as the Commission may determine by rule.³¹ It is important to stress the implication of the second instance, which may deem an institutional investment manager to have shared investment discretion.

Any manager that has control over another person, such as a natural person, entity, or government instrumentality, that exercises investment discretion over any investment account will also be considered to have investment discretion over that same account.³² For example, if a parent company controls a subsidiary that acts as an investment management firm that determines what securities are held in an investment account, both the parent company and the subsidiary will be deemed to have investment discretion over the account.³³ When a parent company controls a subsidiary that acts as an institutional investment manager both entities will

²⁹ 15 U.S.C. § 78m (f).

³⁰ 17 CFR § 240.13f-1.

³¹ 15 U.S.C. § 78c(a)(35).

³² See Division of Investment Management Frequently Asked Questions About Form 13F, Question 6.

³³ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 6; See also 17 C.F.R. § 240.13f-1.

report that they exercise shared investment discretion.³⁴ Reporting shared investment discretion will be specifically touched on in Section III of this paper.

C) Type of Investment Account that Triggers Reporting

Section 13(f) requires that only institutional investment managers that exercise investment discretion over investment accounts that total \$100,000,000 or more in Section 13(f) securities must report those holdings on Form 13F.³⁵ Each Quarter the Commission publishes a List of Section 13F Securities (the “Official List”).³⁶ Only securities on the Official List contribute to that \$100,000,000 reporting threshold.³⁷ The Official List includes exchange-traded or NASDAQ quoted equity securities that include: stocks, equity options and warrants, shares of close-end investment companies, shares of exchange traded funds, and certain convertible debt securities.³⁸ Securities not included on the Commission’s list should not be counted toward the \$100,000,000 threshold value.

Is it very important to note that calculating the value of the securities necessary for hitting the \$100,000,000 threshold may not be the same as calculating value when compiling the Section 13(f) report. For example, in looking to calculate the \$100,000,000 threshold the institutional investment manager should look to the value of any options, as noted on the Commission’s Official List, at the end of the reporting period and not the value of the underlying securities.³⁹

³⁴ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 6; See also 17 C.F.R. § 240.13f-1.

³⁵ 15 U.S.C. § 78m (f); 17 CFR § 240.13f-1.

³⁶ 17 CFR § 240.13f-1; See “Official List of 13(f) Securities” available at <http://www.sec.gov/divisions/investment/13flists.htm>.

³⁷ 17 CFR § 240.13f-1; See “Official List of 13(f) Securities” available at <http://www.sec.gov/divisions/investment/13flists.htm>.

³⁸ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 7.

³⁹ See Form 13F, Special Instructions at 11(17 C.F.R. § 249.325).

When actually reporting those option holdings the firm must report the value as if it owed the securities underlying those options.⁴⁰

Finally, the securities of the institutional investment manager or a controlled entity, even if listed by the Commission as Section 13(f) securities will not be considered Section 13(f) securities for the purpose of reaching the \$100,000,000 threshold.⁴¹ Still, if the institutional investment manager otherwise reaches the \$100,000,000 threshold it must report holdings of its own securities if listed by the Commission.⁴² Control, for this purpose or as mentioned throughout this paper is deemed to mean operational control.

D) When and How and to Report

Just as important as knowing whether or not Section 13(f) reporting is required is knowing when and how to report.

a) When to Report

An institutional investment manager will have to report under Section 13(f) if, at the end of the last trading day of any month during the current the calendar year, holdings of Section 13(f) securities reach the \$100,000,000 threshold. The institutional investment manager will have to report the holdings at the end of that initial period ending on December 31.⁴³ Following this initial period, the institutional investment manager must reporting holdings as of the last day of each of the first three calendar quarters of the subsequent calendar year, regardless of the value of the holdings in questions.⁴⁴ At the end of each reporting period (the initial and

⁴⁰ See Form 13F, Special Instructions at 4-5 (17 C.F.R. § 249.325).

⁴¹ 17 CFR § 240.13f-1.

⁴² 17 CFR § 240.13f-1.

⁴³ 15 U.S.C. § 78m (f).

⁴⁴ 15 U.S.C. § 78m (f); 17 CFR § 240.13f-1.

subsequent quarterly periods) the institutional investment manager will have forty-five days to submit the report. To illustrate:

Super Investment Management, Inc. reaches \$100,000,000 in Section 13(f) securities for the first time in March of 2010, as calculated at the end of the last trading day in March. The first reporting period will begin on October 1, 2010 and end on December 31, 2010. On the last day of that reporting period Super Investment Management must report its holdings as of that last day, namely December 31, 2010. It will have forty-five days after the end of the reporting period to compile and file the report. It will also have to file reports as of the end of March 2011, June 2011, and September 2011, which are not dependent on holding amounts of 2011, i.e. the amount may be below \$100,000,000 at the end of the subsequent quarterly reporting periods. Again, the holdings as of the last day of the quarter must be reported, and the company will have forty-five days to compile and file the report.

Whether or not reports will be required into 2012 will depend on whether or not the holding amounts of 2011 reach the \$100,000,000 threshold during the end of any calendar month in 2011. In this instance, if Super Investment Management holds \$100,000,000 in Section 13(f) securities at the end of any calendar month in 2011 this will trigger reporting requirements at the end of the December 2011 and into 2012.

b) How to Report

Compiling the Section 13(f) report can be a complex process and a qualified compliance expert or attorney should be consulted. The information required must be submitted on a Form 13F Holdings Report using the Commission's EDGAR system (Electronic Data Gathering, Analysis, and Retrieval system). All filers must apply for a new CIK (Central Index Key) for the Section 13(f) filing, although, if the filer in question has a CIK used only to file a Schedule 13D or Schedule 13G, the filer must use that CIK number.⁴⁵ The Form 13F Holdings Report must be filed after filing out the cover page, the summary page, and the information table, which lists each holding of Section 13(f) securities line by line.

⁴⁵ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 18.

SECTION II - WHY FILE: THE QUATTRO ACTION

Failing to file the Section 13(f) report can have harsh consequences on the institutional investment manager, consequences that include both monetary and non-monetary sanctions. One of the most illustrative SEC administrative proceedings on the consequences of not filing is *The Matter of Quattro Global Capital, LLC*, decided in August of 2007.⁴⁶ Quattro was a registered investment advisor to a collection of hedge funds with assets of approximately \$900,000,000 (collectively) as of 2007.⁴⁷ Quattro directed the investment strategies of the funds in question.⁴⁸ From 2002 to 2005, although the \$100,000,000 threshold was reached, Quattro repeatedly failed to file the Section 13(f) report.⁴⁹ Quattro had repeat notice of the requirement as early as March 2004, yet no steps were taken to rectify the fact that no filings had been made.⁵⁰ This serious failure was found out during a Commission inspection of Quattro in 2005.⁵¹ On July 20, 2005 Quattro filed the current Form 13F for the quarter ending on June 30th and fourteen retrospective Form 13Fs dating back to 2002.

Prior to finding it appropriate to issue sanctions against Quattro, the Commission was stressed the purpose of the Section 13(f) report. The Commission stated:

“The purpose of this disclosure requirement is to collect and disseminate to the public information about the holdings and investment activities of institutional money managers in order to assist investors, issuers, and government regulators . . . The Congressional purpose in enacting Section 13(f) of the Exchange Act was ‘to create a central depository of historical and current data about the investment activities of institutional investment managers’ to assist investors and government regulators. The information is valuable to the Commission because it ‘facilitates consideration of the influence and impact of

⁴⁶ Quattro Global Capital, LLC, File No. 3-12725 (Securities and Exchange Commission, August 15, 2007) (Administrative Proceeding).

⁴⁷ Quattro Global Capital, LLC, File No. 3-12725.

⁴⁸ Quattro Global Capital, LLC, File No. 3-12725.

⁴⁹ Quattro Global Capital, LLC, File No. 3-12725 (Quattro had reached the \$100,000,000 threshold as early as 2001).

⁵⁰ Quattro Global Capital, LLC, File No. 3-12725.

⁵¹ Quattro Global Capital, LLC, File No. 3-12725; See 15 U.S.C. § 80b-9 for the Commission’s power to inspect.

institutional investment managers on the securities markets and the public policy implications of that influence.”⁵²

The Commission found that Quattro willfully violated Section 13(f) for the period of 2002 to 2005. The Commission has the power to sanction under any applicable provision of the federal securities laws. Accordingly, the Commission sanctioned Quattro under Section 203(e) of the Investment Advisors Act by censuring it as a registered investment advisor.⁵³ Under Section 21C of the Exchange Act, Quattro was ordered to cease any current or future violations of Section 13(f). Finally, Quattro was fined \$100,000 in civil penalties under Section 21B of the Exchange Act.⁵⁴ Perhaps more importantly, Quattro would potentially now be on the Commission’s watch list and have its activities more open to scrutiny and frequent audits by the Commission.

A very important take away from this is that penalties will only be handed down for willful violations of Section 13(f), a conclusion based both on the opinion of the Commission and Section 21C of the Exchange Act.⁵⁵ Still, under both relevant case law and Commission interpretation “willful” means intentionally committing the act that constitutes the violation and without the requirement that the actor also be aware that he is violating one of the rules or sections of the securities acts.⁵⁶ Although the Commission spoke of notice in the Quattro decision, institutional investment managers covered under Section 13(f) need not know of the filing requirement to face sanctions by the Commission. Knowing of the filing requirement and still not complying with it, may lead to more serious sanctions. If an institutional investment

⁵² Quattro Global Capital, LLC, File No. 3-12725.

⁵³ Quattro Global Capital, LLC, File No. 3-12725; 15 U.S.C. § 80b-3(e).

⁵⁴ Quattro Global Capital, LLC, File No. 3-12725; See 15 U.S.C. § 78u-2 for the ability of the Commission to levy civil penalties.

⁵⁵ See 15 U.S.C. § 78u-3.

⁵⁶ See Generally *Wonsover v. SEC*, 202 F.3d 408, 414 (D.C. Cir. 2000); See Generally *Tager v. SEC*, 344 F.2d 5,8 (2nd Cir. 1965).

manager comes to find out about the filing requirement long after those duties have accrued, the best course of action is to file the report that is immediately due and all retrospective reports.

SECTION III – PARTICULAR ISSUES WITH SECTION 13(F) FILINGS

A) Specific Reporting Instructions

As a preliminary note, three types of Form 13F reports are currently used: a Form 13F Holdings Report is used if all of the manager’s Section 13(f) securities are listed on the report, a Form 13F Combination Report is used if some of a manager’s securities are reported on another report, and a Form 13F Notice Report is used if all of the manager’s securities are reported on another report (typically used by a parent company when a subsidiary files a Form 13F Holdings Report).⁵⁷ The remainder of this section will provide guidance on common reporting challenges for completing Form 13F Holdings Reports. Combination Reports and Notice Reports are reduced versions of the Holdings Report; therefore, the instructions that follow are also applicable to these of reports.⁵⁸

A Form 13F Holdings Report contains three sections: a cover page, summary page and information table.⁵⁹ The cover page contains basic information about the filing, such as the name, address, and 13F File Number of the institutional investments manger, person signing on behalf of the reporting manager, date of the filing, and report type.⁶⁰ The summary page contains a list of other managers, the total number of entries from the information table, and the total value of the positions reported.⁶¹ The Form 13F Information Table is the substantive portion of the report. It contains ten sections (aggregated into eight columns): Name of Issuer,

⁵⁷ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 33.

⁵⁸ See Form 13F, Special Instructions, at 4 (17 C.F.R. § 249.325).

⁵⁹ Form 13F, Special Instructions, at 3 (17 C.F.R. § 249.325).

⁶⁰ Form 13F, Special Instructions, at 3 (17 C.F.R. § 249.325).

⁶¹ Form 13F, Special Instructions, at 4 (17 C.F.R. § 249.325).

Title of Class, CUSIP, Value, Shares or Principal Amount, a notation for Shares or Principal, Put/Call, Investment Discretion, Other Managers, and Voting Authority, which has three sub columns (Sole, Shared, and None).⁶² To an initial observer, the Form 13F Information Table appears simple and straightforward. However, this seemingly simple table is based on obscure instructions that may seem counter-intuitive to investment professionals.

Not all security positions need to be reported on the Information Table. By carefully reviewing the Official List of Section 13(f) securities and utilizing the small holding exception institutional investment managers can minimize the burden of publicly reporting certain security positions. Other areas that give rise to reporting problems include: dealing with short positions, calculating market value, and options reporting.

The Name of Issue, Title of Class, and CUSIP columns on the information table should match the Commission's Official List. At the end of each calendar quarter the Commission publishes an Official List, which includes most but, not all, publicly traded equity securities.⁶³ Only positions on the list need to be reported on Form 13F and institutional investment managers are entitled to rely upon the most recent iteration of the Official List.⁶⁴ Options are listed separately and do not need to be reported on Form 13F when only the underlying stock appears on the Official List. In addition, securities with a deleted status on the Official List do not need to be reported on Form 13F. If the reporting manager's goal is to minimize the positions reported, a careful review of the Official List is likely to yield some results. A recent report published by the Commission's Office of Inspector General revealed that the Commission utilizes a third party to prepare the Official List, and that the list is not audited or reviewed by an

⁶² Form 13F, Special Instructions, at 4-5 (17 C.F.R. § 249.325).

⁶³ 17 C.F.R. § 13f-1(c).

⁶⁴ 17 C.F.R. § 13f-1(c).

independent party or the Commission's staff.⁶⁵ Recently listed securities, particularly options, and securities that have recently undergone a corporate action are often omitted from the Official List.

Reporting managers can also omit certain positions that qualify for the small holding exception. Under Form 13F Special Instruction number ten, reporting managers may omit positions if they hold fewer than 10,000 shares (or less than \$200,000 principal amount in the case of convertible debt securities) and less than \$200,000 aggregate fair market value (and option holdings to purchase only such amounts).⁶⁶ Both of these requirements must be met in order to omit small positions.⁶⁷ As indicated by the permissive language, these positions may be included in the filing at the discretion of the reporting manager.⁶⁸ This instruction could be particularly useful for hedge funds and proprietary trading firms that are holding small positions in lightly traded symbols, such as micro-cap companies, and would prefer to maintain confidentiality.

The next step in completing the information table is determining the number of shares or principal and the market value of each security. Certain convertible debt securities can be found on the Official List, and the principal amount, market value and Column 5 designation "PRN" should be listed for these securities.⁶⁹ The number of shares of long stock (including loaned shares) and market value of those shares (rounded to the nearest thousand dollars) should be reported for stock securities.⁷⁰ Short stock is not included on Form 13F and should not be

⁶⁵ Office of Inspector General, Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480, at 14-15 (Securities and Exchange Commission, September 27, 2010).

⁶⁶ Form 13F, Special Instructions, at 4 (17 C.F.R. § 249.325).

⁶⁷ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 39.

⁶⁸ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 39.

⁶⁹ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 7.

⁷⁰ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 41.

deducted from a long position.⁷¹ For emphasis, Questions 41 from the Commissions Frequently Asked Questions About Form 13F is printed below.

Question 41

Q: What about short positions?

A: You should not include short positions on Form 13F. You also should not subtract your short position(s) in a security from your long position(s) in that same security; report only the long position.⁷²

The methodology for calculating both the number of “shares” and market value of options will strike industry professionals as bizarre and contrary to the purported purpose of Section 13(f). Like stock, only long options positions are reported on Form 13F; thus written or short positions in calls and puts should be excluded or ignored.⁷³ Long options positions are converted to shares based on the number of shares each option contract controls.⁷⁴ Although the industry standard is 100 shares, special dividends or other corporate actions sometime impact the number of shares per contract. Market value for options is calculated by taking the number of shares as calculated above times the market price for the underlying stock.⁷⁵ Finally, all options series are aggregated onto two lines, one line for puts and a separate line for calls, using the Title of Class and CUSIP for the underlying instrument.⁷⁶

No discussion of options and Form 13F is complete without an important note on options value and the \$100,000,000 reporting threshold. For reporting purposes, options contracts are converted to shares controlled and listed at the market value of the shares controlled.⁷⁷ However,

⁷¹ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 41.

⁷² See Division of Investment Management Frequently Asked Questions About Form 13F, Question 41.

⁷³ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 43.

⁷⁴ Form 13F, Special Instructions, at 4-5 (17 C.F.R. § 249.325).

⁷⁵ Form 13F, Special Instructions, at 4-5 (17 C.F.R. § 249.325).

⁷⁶ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 44.

⁷⁷ Form 13F, Special Instructions, at 11 (17 C.F.R. § 249.325).

for purposes of the \$100,000,000 reporting threshold options are valued at their actual market value.⁷⁸

In Column 6, reporting managers are asked to list one of three types of investment discretion: sole, shared-defined, or shared other.⁷⁹ Sole investment discretion occurs when a single filer has control of the securities reported on Form 13F.⁸⁰ Reporting sole means that you do not control another reporting person, are not controlled by another reporting person, and do not otherwise share investment discretion with another institutional investment manager.⁸¹ An investment advisory firm that operates on a single legal entity is an example of a firm that would report sole investments discretion.⁸² Shared-defined investment discretion is used when the reporting manager controls or is controlled by another legal entity.⁸³ For example, a bank holding company and its subsidiary would utilize the shared-defined category.⁸⁴ Shared-defined is also used when investment discretion is shared between investment companies and investment advisers who advise those companies.⁸⁵ Finally, the shared-other category is used for any security in which investment discretion is shared in a manner other than the shared-defined category, such as multiple levels of shared investment discretion.⁸⁶

If investment discretion is shared, the reporting manager must identify the other institutional investment manager that shares investment discretion.⁸⁷ Other managers should be listed on the Summary Page under the List of Other Included Managers heading and assigned a

⁷⁸ Form 13F, Special Instructions, at 11 (17 C.F.R. § 249.325).

⁷⁹ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁸⁰ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁸¹ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁸² See Division of Investment Management Frequently Asked Questions About Form 13F, Question 45.

⁸³ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁸⁴ Frequently Asked Questions, Question 46.

⁸⁵ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁸⁶ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325). *See also* Frequently Asked Questions, Question 47.

⁸⁷ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

two digit number (beginning with 01, 02, etc.).⁸⁸ The two digit number is then reported on the 13F Information Table in the Other Managers column.⁸⁹

Voting Authority is different than investment discretion, and is defined as the ability to vote on non-routine matters such as: contested election of directors, mergers and acquisitions, and changes in corporate documents.⁹⁰ A manager should report sole voting authority if it exercises sole authority to vote on non-routine matters or if voting authority is only shared through the arrangement that caused the manager to report shared-defined investment discretion.⁹¹ The voting authority sub-column “none” is used if the reporting manager can only vote on routine matters such as selecting an accountant, electing uncontested directors, or approving an annual report.⁹² The number of shares that fall within each of these categories should be listed in the voting authority sub-column.⁹³

This section can be used as a basic guide for dealing with many of the issues that first time filers encounter; however, it is also illustrative of the complexity embedded in the tedious and often counter-intuitive Form 13F Instructions. Institutional Investment Managers should consult an experienced compliance professional or licensed attorney for assistance in preparing, reviewing and filing Form 13F. Even experienced reporting managers should take additional precautions as the Commission works to expand its review and audits of Form 13F filings.⁹⁴

⁸⁸ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 37.

⁸⁹ Form 13F, Special Instructions, at 12 (17 C.F.R. § 249.325).

⁹⁰ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 50.

⁹¹ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 50.

⁹² See Division of Investment Management Frequently Asked Questions About Form 13F, Question 50.

⁹³ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 50.

⁹⁴ Review of the SEC’s Section 13(f) Reporting Requirement, Report No. 480, at 9.

B) Treatment of Confidential Information in Section 13(f) Reports

a) The Public Nature of Section 13(f) Reports

By default, the information reported under Section 13(f), other than that concerning securities held by the account of a natural person⁹⁵ or estate or trust (other than a business trust or investment company) (“the personal holdings exemption”), is public information freely searchable and discoverable through EDGAR. Still, under Section 13(f)(3), the Commission has the ability to exempt certain other information from public disclosure. As noted in the Section:

“ . . . the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5 (The Freedom of Information Act) . . . Notwithstanding the preceding sentence, any such information and securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.”⁹⁶

It is important to note that even though the Commission may exempt certain information from public disclosure under Section 13(f)(3), such grant by the Commission does not exempt the filer in question from actually reporting the information on Form 13F.⁹⁷ In requesting confidential treatment, certain steps need to be taken by the filer during the Section 13(f) filing process.

b) Requesting Confidential Treatment of Reported Information under 13(f)(3)

The rules and procedures for requesting the confidential treatment of reported information are found in Rule 24b-2, Instructions for Confidential Treatment 1 and 2 of Form 13F, and Rule 101(c)(1)(i) of Regulation S-T. Rule 24b-2 describes the procedure in which the confidential treatment application (“CT request/application”) is made.⁹⁸ Form 13F speaks specifically to certain categories of information that can be exempted from public disclosure as

⁹⁵ The purpose of the personal holding exemption is to prevent the disclosure of the identity of the natural person, estate, or trust in question. See Frequently Asked Questions, Question 54.

⁹⁶ 15 U.S.C. § 78m (f)(3).

⁹⁷ 15 U.S.C. § 78m (f)(3) but see 15 U.S.C. § 78m (f)(2).

⁹⁸ See 17 C.F.R. § 240.24b-2.

well as further describing the applicable procedure for filing the CT application.⁹⁹ Rule 101(c)(1)(i) speaks to the actual method of filing the CT application.¹⁰⁰

Under Rule 24b-2 the filer must submit a CT application, noting the legal and factual grounds for sustaining the request for confidential treatment.¹⁰¹ Those legal grounds for confidential treatment must be based on applicable rules and regulations exempting certain classes of information from public disclosure.¹⁰² The filer must also specify the factual link between those rules and regulations and the information being reported in the Section 13(f) filing.¹⁰³ Additionally, the filing must suggest a reasonable time to keep confidential the information for that particular Section 13(f) filing.¹⁰⁴ Other than confidential treatment based on the personal holdings exemption, the Commission will prescribe a specific length of time for confidential protection relating to information dealing with special investment strategies and open risk arbitrage positions.¹⁰⁵

Rule 24b-2 and Form 13F both require CT applications and the confidential section of the Form 13F Holdings Report to be submitted at the same time. This material should not be filed with the rest of Form 13F that is filed through EDGAR. Instead, the public portion of the Form 13F Holdings Report should indicate that a portion of the report has been submitted for confidential treatment to the Commission. Rule 101 of Regulation S-K requires that all CT applications and supporting materials be submitted not on EDGAR but submitted to the

⁹⁹ See Form 13F, Instruction for Confidential Treatment, at 1-4 (17 C.F.R. § 249.325).

¹⁰⁰ See 17 C.F.R. § 232.101(c)(1)(i).

¹⁰¹ 17 C.F.R. § 240.24b-2.

¹⁰² 17 C.F.R. § 240.24b-2.

¹⁰³ 17 C.F.R. § 240.24b-2.

¹⁰⁴ 17 C.F.R. § 240.24b-2.

¹⁰⁵ See Form 13F, Instruction for Confidential Treatment, at 2 (17 C.F.R. § 249.325); See also See Division of Investment Management Frequently Asked Questions About Form 13F, Questions 55a, 56, 57 and 57a.

Commission’s DC office in paper format.¹⁰⁶ These procedures must be followed for every Section 13(f) filing, even if the certain holdings information for which confidential treatment is requested has not changed.¹⁰⁷

c) Duration of Confidential Treatment and the Limits of Confidentiality

Confidential treatment, if granted, is granted for the particular Section 13(f) filing in question and only applies to the information in that specific filing. Confidential treatment will be given for a particular duration of time based on the reasoning used to exempt the information in question from public disclosure. Additionally, the Commission may withdraw confidential treatment protection if the Commission determines that it is in the best interest of investors and/or market protection.¹⁰⁸

i) Personal Holdings Exemption

As noted above, the personal holdings exemption is specifically noted in Section 13(f)(3) and exempts from public disclosure information concerning securities held by the account of a natural person or estate or trust (other than a business trust or investment company).¹⁰⁹ When confidential treatment is granted for the personal holdings exemption that treatment will last indefinitely for the report filed.¹¹⁰ The filer will have to file subsequent Section 13(f) reports and reapply for the confidential treatment of the information as it pertains to those subsequent reports.¹¹¹

¹⁰⁶ 17 C.F.R. § 232.101(c)(1).

¹⁰⁷ See Form 13F, Instruction for Confidential Treatment, Preliminary Note (17 C.F.R. § 249.325); See also 17 C.F.R. § 232.101(c)(1).

¹⁰⁸ 17 C.F.R. § 240.24b-2.

¹⁰⁹ 15 U.S.C. § 78m (f)(3).

¹¹⁰ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 55a.

¹¹¹ See Division of Investment Management Frequently Asked Questions About Form 13F, Questions 55 and 55a.

ii) Exemption for Information Pertaining to Certain Investment Strategies

The Commission will also allow information relating to certain investment strategies, that if disclosed could cause harm to the filer and its clients, to be exempted from public disclosure. In order to gain confidential treatment for this information the filer must provide the factual and legal support in the CT application as prescribed in Instruction 2a-2e of Form 13F and in various Commission releases.¹¹² In requesting the exemption, the filer may request a period of confidentiality of three months, six months, nine months, or one year.¹¹³ Those requests must correlate factually to the time period needed to effectuate the filer's investment strategy.¹¹⁴ After the granted period expires the filer must amend the filed Form 13F with the confidential information that is no longer protected from disclosure.¹¹⁵

iii) Exemption for Open Risk Arbitrage Positions

Open risk arbitrage position may be exempt from public disclosure and confidential treatment given if the conditions and factual circumstances as stated in Instruction 2f of Form 13F exist on the last day of the period for which the Section 13(f) report is being filed.¹¹⁶ If the filer in question has a reasonable belief at the end of the filing period that it may not close the entire position in question before the date the report is due (45 days after the end of the period) and makes that representation on the CT application the Commission will automatically grant confidential treatment with respect to those positions.¹¹⁷ Confidential treatment will be granted through the end of the quarterly period in which a deal is completed or terminated but not longer

¹¹² See Form 13F, Instruction for Confidential Treatment, at 2 (17 C.F.R. § 249.325); See SEC Letter, Section 13(f) Confidential Treatment Requests (Securities and Exchange Commission, June 17, 1998) available at <http://www.sec.gov/divisions/investment/guidance/13fpt2.htm>.

¹¹³ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 57a.

¹¹⁴ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 57a.

¹¹⁵ See Division of Investment Management Frequently Asked Questions About Form 13F, Question 58.

¹¹⁶ See Form 13F, Instruction for Confidential Treatment, at 2 (17 C.F.R. § 249.325).

¹¹⁷ See Form 13F, Instruction for Confidential Treatment, at 2 (17 C.F.R. § 249.325).

than the one year from the date that the originally filing is due. At expiration of that time, the filer in question must report the information via amendment to the filed Form 13F.¹¹⁸

iv) Commission Termination of Confidential Treatment prior to the Applicable Expiration Date.

For the protection of investors or upon appropriate Freedom of Information Act requests, the Commission, in its discretion, may revoke confidential status for all or part of the information which has been granted such status prior to the expiration of such status.¹¹⁹ This is true regardless of the exemption which allows for confidential treatment. If confidential treatment is revoked, the Commission will contact the filer and the filer will have to amend the filed Form 13F with the information that is no longer considered confidential.¹²⁰ If confidential treatment is denied or revoked, the filer may appeal that determination under the Commission's Rules of Practice.¹²¹

d) Application of Section 13(f)(2)

As discussed above, Section 13(f)(3) allows filers to petition the Commission for the confidential treatment of certain information, but it does not alleviate the need for a filer to make the appropriate filing of Form 13F. Section 13(f)(2) allows the Commission, through the showing of extraordinary circumstances, to exempt a potential filer from the filing requirement all together.¹²² Section 13(f)(2) states:

“The Commission, by rule or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment

¹¹⁸ See Form 13F, Instruction for Confidential Treatment, at 2 (17 C.F.R. § 249.325).

¹¹⁹ 17 C.F.R. § 240.24b-2(d)(1).

¹²⁰ 17 C.F.R. § 240.24b-2(f).

¹²¹ 17 C.F.R. § 240.24b-2(d)(2).

¹²² Wynnefield Capital Management LLC and Wynnefield Capital, Inc., Release No. 61930 (Securities and Exchange Commission, April 16, 2010) (SEC Release).

managers or securities from any or all of the provisions of this [Section 13] subsection or the rules thereunder”¹²³

The Commission has noted that there is no formal rule or procedure that specifically covers the Section 13(f)(2) exemption.¹²⁴ Accordingly the Commission looks to Section 13(f)(4), Section 36 of the Exchange Act, and Rules 0-12 under the Exchange Act in determining whether or not to grant a Section 13(f)(2) exemption.¹²⁵ In considering the need to protect investors and the markets the Commission has held that if the protection sought is covered by Section 13(f)(3), a filer must make a good faith effort to obtain that protection through the CT application process, as discussed above.¹²⁶ If a good faith effort is made, the CT application is denied and extraordinary circumstances exist the Commission may find cause to grant the Section 13(f)(2) exemption. Pursuing a CT request and failing to obtain it does not by itself amount to the extraordinary circumstances needed that would justify a Section 13(f)(2) exemption.¹²⁷

In one instance an investment management firm sought a the Section 13(f)(2) exemption in an attempt to protect investment strategies that it considered “trade secrets.”¹²⁸ The firm noted that continually filing CT requests was unduly burdensome and there was no assurance that the Commission would grant or continue to grant confidential treatment to certain information.¹²⁹ The Commission found that the current CT application process would provide adequate protection to the investment strategies in question and the firm failed to file the required CT application.¹³⁰ Furthermore, the “burdensome” nature of filing the CT application process did

¹²³ 15 U.S.C. § 78m (f)(2).

¹²⁴ Wynnefield Capital Management, LLC, Release No. 61930.

¹²⁵ Wynnefield Capital Management, LLC, Release No. 61930.

¹²⁶ Wynnefield Capital Management, LLC, Release No. 61930.

¹²⁷ Wynnefield Capital Management, LLC, Release No. 61930.

¹²⁸ Wynnefield Capital Management, LLC, Release No. 61930.

¹²⁹ Wynnefield Capital Management, LLC, Release No. 61930.

¹³⁰ Wynnefield Capital Management, LLC, Release No. 61930.

not amount to an extraordinary circumstance.¹³¹ Accordingly, the Commission denied the Section 13(f)(2) exemption.¹³² The practical consequence of this that unless some very extreme circumstances exist, the Commission will not grant a Section 13(f)(2) exemption. The reasoning for this lies in the power of the exemption and the need to prevent institutional investment managers from subverting the purpose of Section 13(f) and Rule 13f-1.¹³³

CONCLUSION

The filing of the Section 13(f) report can be a complex and tedious process, but it is also a necessary process for the institutional investment manager that has investment discretion over \$100,000,000 or more in Section 13(f) securities.¹³⁴ The Commission, as revealed by the recent OIG (Office of Inspector General) report, is making a concerted effort to step up the enforcement of Section 13(f).¹³⁵ This increased enforcement effort will involve greater systemic checks for both the completeness and accuracy of all filings made, with inaccurate or erroneous filings rejected at the time of submission.¹³⁶ The OIG has also stressed the need to properly monitor for instances in which managers fail to file and to continuously monitor those particular managers for Section 13(f) deficiencies.¹³⁷ The Commission has agreed with the OIG and is beginning to streamline its monitoring and review efforts.¹³⁸ The duty of the Commission to properly execute its duties under Section 13(f) will be split among various Commission divisions going forward, including the Division of Investment Management (IM) and the Office of Compliance

¹³¹ Wynnefield Capital Management, LLC, Release No. 61930.

¹³² Wynnefield Capital Management, LLC, Release No. 61930.

¹³³ *Supra* Section II.

¹³⁴ 15 U.S.C. § 78m (f).

¹³⁵ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 6-13.

¹³⁶ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 12.

¹³⁷ Review of the SEC's Section 13(f) Reporting Requirement, Report No. 480 at 10.

¹³⁸ Memorandum from the Office of the Chairman, Response to Report No. 480 (Securities and Exchange Commission, September 24, 2010).

Inspections and Examinations (OCIE).¹³⁹ Along with the stepped up enforcement efforts, the Commission is analyzing the need to change the substantive reporting requirements, including the need to increase the reporting threshold and the reporting of aggregate purchase and sales of Section 13(f) securities.¹⁴⁰

With the sound of the 2008 financial crisis still ringing in its ear, the Securities and Exchange Commission has been compelled to change the landscape of securities compliance. In doing so, it has been reminded of the Congressional purpose of Section 13(f), namely to “. . . [C]reate a central repository of historical and current data . . . designed to improve the body of factual data available and, thus, facilitate the consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence.”¹⁴¹ As a consequence, it is vital that institutional investment managers know their duties under Section 13(f) and how to properly execute those duties.

¹³⁹ Memorandum from the Office of the Chairman, Response to Report No. 480 at 1.

¹⁴⁰ Memorandum from the Division of Investment Management, Response to Report No. 480 (Securities and Exchange Commission, September 24, 2010) at 3-4.

¹⁴¹ Review of the SEC’s Section 13(f) Reporting Requirement, Report No. 480 at 1 (citing Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 34-14852 (June 15, 1978), 43 Fed. Reg. 26700-01 (June 22, 1978)).

SAMPLE HOLDINGS REPORT

The following is a sample Form 13F Holdings Report. It includes the cover page, the summary page, and the information table.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM 13F
FORM 13F COVER PAGE**

Report for the Calendar Year or Quarter Ended: _____

Check here if Amendment ; Amendment Number: _____
This Amendment (Check only one.): is a restatement.
 adds new holdings entries.

Institutional Investment Manager Filing this Report:

Name: _____

Address: _____

Form 13F File Number: 28-_____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____

Title: _____

Phone: _____

Signature, Place, and Date of Signing:

[Signature] [City, State] [Date]

Report Type (Check only one.):

13F HOLDINGS REPORT. (Check here if all holdings of this reporting manager are reported in this report.)

13F NOTICE. (Check here if no holdings reported are in this report, and all holdings are reported by other reporting manager(s).)

13F COMBINATION REPORT. (Check here if a portion of the holdings for this reporting manager are reported in this report and a portion are reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:
[If there are no entries in this list, omit this section.]

Form 13F File Number	Name
28-_____	_____

[Repeat as necessary.]

FORM 13F SUMMARY PAGE

Report Summary:

Number of Other Included Managers: _____

Form 13F Information Table Entry Total: _____

Form 13F Information Table Value Total: _____ (thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number	Name
_____	28-_____	_____

[Repeat as necessary.]

FORM 13F INFORMATION TABLE (FILLED IN)

NAME OF ISSUER	TITLE OF CLASS	CUSIP	VALUE (x\$1000)	SHARES/ PRN AMT	SH/ PRN	PUT/ CALL	INVTMT DSCRETN	OTHER MANAGERS	VOTING AUTHORITY		
									SOLE	SHARED	NONE
AAVID THERMAL TECHNOLOGIES INC	COM	001957109	5223	85440	SH		DEFINED 01		35162	0	50278
ABBOTT LABORATORIES INC	COM	002824100	2744	67336	SH		DEFINED 01		28300	0	39036
AMERICAN EXPRESS CO	COM	025816109	988	20000	SH		OTHER 01 02 03		0	20000	0
AUTOMATIC DATA PROCESSING INC	LYON SUB ZERO	053015AC7	32785	61860000	PRN		DEFINED 01		0	0	0
BALLY TOTAL FITNESS HLDG CORP	COM	05873K108	1216	70000	SH		SOLE		70000	0	0
BATTLE MTN GOLD CO	PFD CONV \$3.25	071593907	155	2930	SH		SOLE		2930	0	0
BLACK & DECKER CORP	COM	091797100	3182	84000	SH		DEFINED 02		38100	0	45900
BUCKEYE PARTNERS L P	UNIT LTD PARTN	118230101	1712	20000	SH		SOLE		20000	0	0
CALDOR CORP	COM	127787958	100	1122	SH	PUT	SOLE		1122	0	0
CHEVRON CORPORATION	COM	166751107	3275	58356	SH		DEFINED 03		31756	0	26600
COCA COLA CO	COM	191216100	1986	24000	SH		OTHER 01 02 03		0	24000	0
COMPAQ COMPUTER CORP	COM	204493100	2611	67600	SH		DEFINED 02		31900	0	35700
CPC INTERNATIONAL, INC	COM	126149103	4225	60900	SH		DEFINED 01		21300	0	39600
EXXON CORP	COM	302290101	98648	1210400	SH		OTHER 01 02 03		0	1210400	0
FEDERAL HOME LOAN MRTG CORP	COM	313400301	853	10000	SH		OTHER 01 02 03		0	10000	0
FORD MOTOR CO	COM	345370100	1470	42750	SH		DEFINED 05		17550	0	25200
HUMANA INC	COM	444859102	2347	93400	SH		DEFINED 01		51400	0	42000
JOHNSON & JOHNSON	COM	478160104	5000	54200	SH		DEFINED 05		17300	0	36900
LVHM MOET HENNESSY LOU VUITTON	SPONSORED ADR	502441207	1107	12000	SH		OTHER 01 02 03		0	12000	0
MCI COMMUNICATIONS CORP	COM	552673105	1921	63500	SH		DEFINED 04		26800	0	36700
MOBILE TELECOMMUNICATIONS TECH	COM	607406905	185	10000	SH	CALL	SOLE		0	0	0
EITNEY BOWES INC	COM	724479100	1225	25000	SH		SOLE		25000	0	0
SECURITY DYNAMICS TECHNOLOGIES	COM	814208904	7523	96600	SH		DEFINED 03		40900	0	55700

</TABLE>