

Legal Sidebar

Hedge Funds and the Securities Exchange Act's Section 13(d) Reporting Requirements

01/13/2016

A [hedge fund](#) is an investment vehicle that is typically available only to sophisticated investors, such as institutions, pension funds, and individuals with significant assets and investment experience. Some hedge funds (often referred to as “[activist](#)”) have taken a significant interest in the business activities of companies in which they have investments. [Some commenters](#) have expressed concern that activist hedge funds are causing job losses and declines in research and development in their pursuit of short-term profits for investors. [Other commenters](#) believe that activist hedge funds are good for the overall economy because their activism results in increased economic efficiencies.

For the most part, hedge funds have fewer reporting requirements to the Securities and Exchange Commission (SEC) than companies that are available for trading by the general public. Although hedge funds may not have SEC reporting and registration requirements, advisers to hedge funds may have to register with the SEC. [Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act](#), titled “Regulation of Advisers to Hedge Funds and Others,” sets out amendments to the [Investment Advisers Act](#) that require, in certain circumstances, advisers to hedge funds and other private funds to register with the SEC. Very generally, according to this title, a hedge fund adviser with less than \$25 million in assets registers with the state in which it has its principal place of business but does not register with the SEC. A hedge fund adviser with managed assets of \$100 million or more generally does register with the SEC unless the assets managed are from \$100 million and \$150 million and it qualifies for the [Private Fund Adviser exemption](#).

[Section 13\(d\)](#) of the Securities Exchange Act may have a significant impact on the activities of hedge funds. Titled “Reports by persons acquiring more than five per centum of certain classes of securities,” section 13(d) requires that any person who acquires beneficial ownership ([Beneficial ownership](#) in this context is ownership of stock that allows a person to vote the stock and/or sell the stock.) of more than 5 percent of any equity class of stock in a company registered with the SEC must file a statement within ten days with the SEC. The statement must include such disclosures as the source and amount of the funds used in making the purchases, whether the purpose of the purchases is to control the business, the number of shares beneficially owned, and the number of shares concerning which there is a right to acquire.

Critics of activist hedge funds often look to amending section 13(d) in order to require what they believe will be more accountability and transparency of hedge fund actions. Critics generally believe that there is a need for more accountability and transparency of hedge fund actions. Supporters of hedge funds generally believe that hedge funds should be lightly regulated because they benefit the overall economy. One possible amendment of section 13(d) would be to shorten the ten-day window between 5 percent acquisition and the SEC reporting requirement. A hedge fund is able to continue purchasing during this ten-day window. [Critics of this continued purchasing](#) believe that, because the 5 percent disclosure often positively moves the market, a hedge fund receives outsized returns at the expense of other investors who do not have the knowledge that the fund has a 5 percent ownership of a company and is continuing to invest for ten days before the required disclosure. Another amendment might be to decrease the 5 percent reporting requirement. [Supporters of activist hedge funds](#) might counter with their belief that hedge funds should be able to continue purchasing more than 5 percent during the ten-day window because the overall economy will benefit by creating profit for hedge fund investors and at the same time causing companies that are inefficient to reform or fail.

[H.R. 3291, 114th Congress](#), the Hedge Fund Sunshine Act of 2015, would amend section 13(d) to change the 5 percent reporting requirement to 1 percent and the ten-day window to five days. It would also add subsection “s” to section 13 of the Securities Exchange Act to require a hedge fund with \$100 million or more in assets under management and that is the beneficial owner of more than 1 percent of a class of any security to file a quarterly report with the SEC to disclose the ownership interest. In order to determine beneficial ownership, a hedge fund would have to include any equity security concerning which the hedge fund has an ownership interest in any derivative instrument. The SEC would be required to make these reports available to the public on its website.