THE WALL STREET JOURNAL.

Mum's the Word for Some Investors --- SEC Allows Money Managers Who Say Confidentiality Is Key to Conceal Certain Stock Holdings

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923 words
8 December 2011
The Wall Street Journal
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The Wall Street Journal - Print and Online
CTGWSJ
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English

Fifty money managers have used Securities and Exchange Commission rules to keep confidential their stakes in certain companies so far this year, an analysis of securities filings shows.

The longstanding practice got a new burst of attention last month when billionaire Warren Buffett's Berks hire Hath away Inc. disclosed a $10.7 billion bet on International Business Machines Corp.

The Omaha, Neb., conglomerate had been secretly accumulating the shares since March, twice receiving an exemption from the SEC on a 36-year-old law that requires investment firms owning more than $100 million in publicly traded stocks to disclose their holdings quarterly.

The law says these big investors may conceal their bets if disclosure would be likely to cause "substantial harm" to their competitive position, according to SEC guidance.

The SEC declined to comment for this article. A spokesman said after Mr. Buffett's stake in IBM was announced Nov. 14 that the law requires officials to "balance the benefits of transparency of how large managers invest with the need to temporarily protect the legitimate confidentiality interests of managers in limited circumstances."

Some investors say they deserve the right to conceal their moves, since other money managers might mimic them and push up the stock prices of companies in which they are buying shares. When high-profile investors like Mr. Buffett disclose even small stakes, it draws immediate attention.

"The investments we make are a result of our own hard work and analysis and research," says Phillip Goldstein, managing partner of Bulldog Investors, a hedge-fund group in Saddle Brook, N.J. "Why does that become a public commodity?"

Critics of such confidentiality say the SEC should have to explain more about why certain investors can keep their moves secret. The process "raises the question: Is this really right? Is this really fair treatment?" said John Rogers, president and chief executive of the CFA Institute, a trade group for investment professionals.

So far this year, the 50 money managers who hid at least some of their holdings from public disclosure sought confidential treatment on a total of 154 quarterly filings, according to an analysis by The Wall Street Journal. The investors range from Mr. Buffett to Deutsche Bank AG to firms run by activist investors Carl Icahn and Nelson Peltz.

Most of the confidential filings were made by hedge funds seeking to shield their investment strategies from rivals and copycats.

Keith Schaitkin, general counsel for Mr. Icahn's funds, said the SEC's rules "apply differently to Mr. Icahn, because substantially all the invested money is his." The 1975 law directed the SEC to exempt "natural persons," as opposed to money managers, from the filing requirement.

A spokeswoman for Mr. Peltz's Trian Fund Management LP funds declined to comment.

Relational Investors LLC, the activist investment fund run by Ralph Whitworth, cloaked its purchases of Co. before agreeing Nov. 17 to take a spot on the computer giant's board. Relational said last month it had accumulated slightly less than a 1% stake in H-P. Mr. Whitworth wouldn't comment.

In August, HBK Investments LP, a Dallas hedge fund with $6.2 billion in assets, said it shielded stakes valued at $381,000 in waste hauler Progressive Waste Solutions Ltd. and $225,000 in warehouse owner Prologis Inc., among others. Prologis was acquired in June by AMB Property Corp., which then took

Prologis's name. The SEC allows investors to conceal their ownership of companies involved in mergers, because the SEC says investors could be harmed if the deal isn't completed. HBK declined to comment.

The Journal sifted through quarterly stock-holding filings in which investors said they hadn't disclosed certain stakes and had sought confidential treatment from the SEC. Since the start of 2007, 139 investors have asked for the disclosure exemption in 1,058 filings.

Berkshire Hathaway sought confidential treatment for at least one holding in 10 of its 20 quarterly filings over the past five years, according to the Journal's analysis. Fifteen fund managers sought confidentiality in every filing over the past five years, including Deutsche Bank and Davidson Kempner Capital Management LLC, a New York hedge fund.

It isn't clear how often the SEC denies confidentiality requests by big investors. Vikas Agarwal -- an associate professor of finance at Georgia State University, who reviewed securities filings from 1999 to 2007 with three colleagues -- estimates the denial rate during that period was 18%.

If the SEC approves, an investor's holdings are typically kept secret for a year. Investors also stand to benefit even when the SEC denies a request, because the information remains confidential while the agency decides.

That process typically takes three to six months. Repeated requests from investors who have previously been denied are handled more quickly in order to discourage them from gaming the system, people familiar with the situation say.

Mr. Goldstein, of Bulldog Investors, has waged a five-year fight against the disclosure rule and has never filed a quarterly report listing his holdings, even confidentially. In October, he sought a blanket exemption from the disclosure rules, which he says are unconstitutional and akin to forcing Coca-Cola Co. to share the formula for Coke. The move came after a federal appeals court sent a lawsuit filed by Mr. Goldstein back to the SEC.

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