



April 20, 2011

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File No. S7-10-11, *Beneficial Ownership Reporting Requirements and Security-Based Swaps*

Dear Ms. Murphy:

The American Business Conference (ABC) is a Washington-based coalition of CEOs of midsize growth companies founded in 1981 by Arthur Levitt, Jr. The current chairman of ABC is Alfred West, Chairman and CEO of SEI Investments, Oaks, Pennsylvania.

ABC is submitting this comment letter in response to the Commission's proposed rule regarding beneficial ownership reporting requirements and security-based swaps.

We support the Commission's move to clarify the ongoing application of beneficial ownership obligations for holders of securities-based swaps.

In addition, we strongly recommend that the Commission reevaluate and recalibrate beneficial ownership reporting obligations under Section 13(d).

Our focus in this letter is on Section 13(d). Under that Section, when a single shareholder, or group of shareholders, amasses a five percent position in a publicly-traded company, the acquiring party or parties must disclose that fact and the Commission must insure that the disclosure is

made in a timely matter. At present, there is a ten-day filing window between the time the five percent ownership status is achieved and when it is disclosed.

This ten-day filing window is an anachronism that remains arguably the most glaring inadequacy in the Commission's entire disclosure regime. In effect, the ten-day grace period provides large, activist investors, such as hedge funds, a legally-sanctioned loophole for trading on material, inside information.

As the law firm Wachtel, Lipton, Rosen & Katz documents in its recent Petition for Rulemaking, hedge funds have used the ten-day "insider trading window" to buy shares from investors unaware of the market-moving information to be disclosed at the close of the ten-day window.¹ While legal, such purchases violate the spirit of the insider trading law.

Obviously, these covert purchases cause shareholders to sell at a discount to the price their stock would fetch if disclosure were timelier. The covert purchases also can result in the target company's board suddenly being confronted with a new "partner" with sufficient voting power to dramatically influence the company's direction. Both from the perspective of shareholders who sell at a discount or shareholders whose board the covert acquirer seeks to change, the 10-day window is an opportunity for abuse.

As the Wachtell Petition points out, there is a disparity between the reporting period under Section 13(d) and a wide range of other reporting requirements.² For example:

- an 8-k must be filed within four days of a relevant event;
- the Section 16 reporting deadline for transactions by corporate insiders is two days; and,
- disclosures under Regulation FD must be instantaneous.

¹ Petition for Rulemaking Under Section 13 of the Securities Exchange Act of 1934, Wachtel Lipton, Rosen & Katz, March 7, 2011, File No. 4-624 (hereafter "Wachtell Petition"). Available at <http://www.sec.gov/rules/petitions/2011/petn4-624.pdf>.

² Wachtell Petition, p. 4.

It may be that the Commission has a policy rationale for permitting the anomalously broad ten-day window for Section 13(d) reporting. If so, it should articulate it. Absent compelling reasons for retaining such a permissive disclosure policy, the Commission should shorten the Section 13(d) reporting requirements to the absolute minimum period practicable.

Given the sophistication of the reporting entities, the ease with which such information can be made public, the importance of the information for the investing public and the “insider trading” opportunity that delay creates, any grace period longer than one business day seems to us impossible to justify.

Sincerely,

A handwritten signature in cursive script that reads "John Endean". The signature is fluid and elegant, with a long, sweeping underline that extends to the left.

John Endean
President