

June 4, 2022

Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Modernization of Beneficial Ownership Reporting
[Release Nos. 33-11030; 34-94211; File No. S7-06-22]

Position Reporting of Large Security-Based Swap Positions
[Release No. 34-93784; File No. S7-32-10]

Dear Chair Gensler,

We are writing to express our support for two proposals of the Securities and Exchange Commission—“Modernization of Beneficial Ownership Reporting” and “Position Reporting of Large Security-Based Swap Positions”—and to clear up any misconception that labor unions oppose these important regulatory changes. The most significant aspects of the proposed rules include: 1) shortening the reporting window of a 5 percent beneficial ownership stake in a public company from ten days to five days for activist investors; 2) eliminating disclosure loopholes that allow large investors to keep their derivatives-based beneficial ownership stakes secret; and 3) clarifying that investors who acquire beneficial ownership stakes in concert with each other for the purpose of changing control of a company constitute a “group” for reporting purposes.

We support these proposals because they will benefit workers and long-term investors including workers’ pension funds. They will not, as some have argued, interfere with shareholder advocacy on environmental, social and governance issues. Instead, the proposed rules are designed to require timely and complete disclosure of activist hedge fund ownership stakes in target companies. We view such disclosure as a matter of market transparency and fairness to prevent creeping takeovers and other abusive practices. Loopholes in the Commission’s disclosure rules that allow hedge fund activists to secretly acquire shares over the 5 percent beneficial ownership disclosure threshold are not in the public interest. To the contrary, activist hedge fund tactics hurt workers and their pension plans by leaving companies in a weakened state that ultimately results in fewer jobs for workers and losses for long-term investors.

1. The Proposed Rules Will Benefit Workers

Activist hedge fund campaigns targeting public companies are associated with a reduction in jobs, R&D spending, and capital expenditures. Indeed, a comprehensive study of over 1,300 such campaigns conducted between 2000 and 2016 found that after activist hedge funds acquire ownership, the company's workforce experiences a steady decline—4.57 percent in the first year and 7.66 percent by the fifth year.¹ This same study found similar declines in R&D spending and capital expenditures at targeted companies,² which ultimately harms workers by making their employers less competitive. The Commission's proposed rules will bring greater and more timely transparency to activist hedge funds' practices to better inform all shareholders and stakeholders of the potentially negative consequences of hedge fund activism.

2. The Proposed Rules Will Benefit Pension Funds

While public companies targeted by activist hedge funds frequently experience a short-term increase in value, these gains are often wiped out in later years. The above-referenced study found that while company value tends to increase in the first three years after being targeted by an activist hedge fund, these gains tend to be reversed in the fourth and fifth years.³ Because pension fund investment time horizons far exceed three years, they stand to lose from hedge fund activist campaigns. Pension funds are also deprived of any short term gains from hedge fund activism if they sell shares during the ten-day delay in disclosure of a beneficial ownership stake. In effect, this ten-day delay is an insider trading loophole that allows hedge funds to continue to buy shares based on their undisclosed plans to boost the target company's short-term stock price.

3. The Proposed Rules Will Not Interfere with ESG Shareholder Advocacy

Although some have argued the proposed rules will interfere with shareholder activism on environmental, social and governance issues, this is not the case. Many workers' pension plans exercise their rights as shareholders to engage in shareholder advocacy consistent with their fiduciary obligations. This includes collaborating on Rule 14a-8 shareholder proposals, "vote no" campaigns focused on particular directors, and shareholder-company engagement strategies. Such investor groups are not formed for the purpose of effectuating a change in control of a company. For this reason, the Commission's proposals will not interfere with these shareholder rights, and any concerns regarding the filing obligations of such groups could be clarified by the Commission in an explanatory statement issued with the final rule.

¹ Mark DesJardine and Rodolphe Durand, "Disentangling the effects of hedge fund activism on firm financial and social performance," 1070, *Strategic Management Journal*, Feb. 5, 2020, available at <https://onlinelibrary.wiley.com/doi/full/10.1002/smj.3126>.

² *Id.* at 1070-72.

³ *Id.* at 1068.

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For these reasons, we applaud the Commission for proposing these important rules and look forward to their implementation. For any further discussion, please contact Brandon Rees, AFL-CIO Deputy Director of Corporations and Capital Markets, at [REDACTED]

Sincerely,

American Federation of Labor and Congress of Industrial Organizations

American Federation of State, County and Municipal Employees

American Federation of Teachers

Communications Workers of America

International Brotherhood of Electrical Workers

International Brotherhood of Teamsters

International Federation of Professional and Technical Engineers

National Education Association

North America's Building Trades Unions

Service Employees International Union

United Food and Commercial Workers

Utility Workers Union of America