November 1, 2022

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. S7-32-10; Proposed Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions; Release No. 34-93784 ("Swaps Proposal");

File No. S7-06-22; Modernization of Beneficial Ownership Reporting; Release Nos. 33-11030; 34-94211 ("Beneficial Ownership Proposal"); and

File No. S7-08-22; Release No. 34-94313, Short Position and Short Activity Reporting by Institutional Investment Managers ("Short Proposal")

Dear Ms. Countryman,

We are officers of the International Institute of Law and Finance ("IILF"),[1] a non-profit, non-partisan institution dedicated to promoting independent research, academic papers, teaching, discussion, and public policy initiatives in law and finance. We have drafted and submitted comment letters on the above Releases, with the objective of putting academic views and research in front of the Commission.[2] We thank the Commission for the opportunity to comment on these Releases, and we thank the Commission Staff for meeting and speaking with us.

We write now to summarize what we believe is an appropriate path forward based on what we have learned since the submission of those comment letters. We commend the Staff for providing valuable insights and asking important questions, including in the Releases.

We believe there is support for the adoption of (1) a **final anti-fraud rule for securities-based swaps**, and (2) a **final rule shortening the Section 13(d) disclosure window to five business days**, assuming the Commission **tables the other aspects of these Releases**, as we previously have suggested. We view this approach as a reasonable compromise based on the comment letters. We believe the Commission could achieve many of the objectives articulated in the Releases by **including guidance in the preface to any final rules** articulating how the Commission's current rules continue to prohibit problematic conduct related to the Releases. These Releases already have been influential, and we believe guidance could accomplish the Commission's policy objectives without expansive final rules.

[1] See https://iillawfin.org for a description of our mission and our role.
[2] As described more fully on the IILF website, we receive compensation for our IILF activities, including drafting the comment letters described herein.

We thank the Commission, and especially the Staff, for their hard work and attention to detail with respect to the various questions and concerns we and others have raised in prior comment letters. We especially appreciate the Staff's willingness to meet with IILF to consider and assess academic research related to the Releases.

For the benefit of the Commission, and the public, IILF has provided links on our website to what we believe are all comment letters submitted by academics on recent rule proposals.[3] Comment letters from law and finance professors have been an important part of the Commission's comment process in the past, and research by academics is often cited in final rules. Our website is intended to make these comment letters more accessible for regulators, commentators, and the public. In our opinion, the academic comment letters submitted in response to the above Releases are broadly consistent with the views we express here in this letter. Consistent with our mission, one of our goals is to help present all academic research to the Commission.

Below we set forth some specific points with respect to the above Releases. We also comment below on a new "group" definition proposal in a recent letter from the law firm of Wachtell, Lipton, Rosen & Katz ("WLRK"), and a study of shareholder activism and employment that some commentators recently have cited in their recent letters.

[3] See https://iilawfin.org/sec-comments. The comments we were involved in drafting received overwhelming support from law and finance academics, and the signatories included many of the leading researchers in the relevant fields. See, e.g., 85 Law and Finance Professors, Comment Letter on the Swaps Proposal (Mar. 21, 2022), https://www.sec.gov/comments/s7-32-10/s73210-20120780-272960.pdf (signed by 85 academics, including authors of many of the leading articles in the relevant fields); 65 Law and Finance Professors, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123313-279608.pdf (signed by 65 academics, including authors of many of the leading articles in the relevant fields). The academic research cited in these letters overwhelmingly demonstrates that shareholder activism generates significant benefits for financial markets. See also Alan Schwartz & Steven Shavell, Comment Letter on the Beneficial Ownership Proposal (May 18, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20129439-295568.pdf; Alan Schwartz & Steven Shavell, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123504-279720.pdf; Charlie Penner & Bob Eccles, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123320-279613.pdf; Robert Eccles & Shivaram Rajgopal, Comment Letter on the Swaps Proposal and Beneficial Ownership Proposal (Mar. 31, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20121969-274700.pdf. Likewise, academic research has shown that short selling generates significant benefits, as discussed in the comment letter on the Short Proposal from seven academics who have written leading articles in this area. See Barbara Bliss, Joey Engelberg, Jonathan M. Karpoff, Peter Molk, Terrance Odean, Adam V. Reed & Matthew C. Ringgenberg, Comment Letter on the Short Proposal (Apr. 25, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126591-287247.pdf. The above letters cite extensively from the academic literature; rather than cite those sources here, we point the Staff to these letters for the relevant citations.

The Swaps Proposal

First, with respect to the Swaps Proposal, we believe there is support for finalizing the proposed anti-fraud rules for security-based swaps ("SBS"). As we said to Staff of the Division of Trading and Markets during our in-person meeting in Washington, D.C., we believe the first section of the Swaps Proposal is an important contribution. It is well researched and clearly written, and provides an excellent summary of the justifications for the proposed anti-fraud rule. We commend the Trading and Markets Staff for this portion of the Swaps Proposal, and we believe the Commission should approve final anti-fraud rules for SBS, as proposed.

We also applaud Chair Gensler for noting in his public "Remarks to the Investment Advisory Committee on the Swaps Proposal" on September 21, 2022, that the Swaps Proposal was responsive not only to the collapse of Archegos, but also to SBS abuses related to the global financial crisis, including abuses involving AIG and its use of swaps.[4] These remarks, and Chair Gensler's specific reference to AIG, were particularly important, valuable, and clarifying. Consistent with this clarification, we believe the Commission could achieve many of its objectives in the Swaps Proposal simply by finalizing the anti-fraud rule, and then describing in guidance in the preface to that final rule the concerns related to SBS that the final rule would be intended to cover, including concerns related to AIG, Archegos, and some uses of credit-default swaps.[5]

We continue to believe that the other aspects of the Swaps Proposal, particularly with respect to equity-based SBS, would exceed the Commission's statutory authority, were not properly noticed for comment, are unsupported by academic research and evidence, and are bad public policy.[6] We believe the comment letter file supports our initial assessment of these problems, and that the Commission could straightforwardly avoid these problems, and accomplish many of its objectives, through appropriate guidance instead of final rules.

Indeed, we believe the Commission's actions and clarifications related to the Swaps Proposal already have accomplished many of these objectives. For example, many of the concerns in the Swaps Proposal were addressed by the complaint in the Commission's enforcement action against Archegos, which described, at paragraph 58, Archegos's very substantial equity-based SBS exposures, ranging **from over 30% to over 70%** of the issuer's outstanding shares.[7] We believe this enforcement action alone has accomplished many of the Commission's objectives with respect to equity-based SBS.

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[4] See Gary Gensler, Remarks to the Investor Advisory Committee (Sept. 21, 2022), https://www.sec.gov/news/speech/gensler-remarks-investor-advisory-committee-092122 (referencing AIG and noting "I also think Rule 9j-1 would help prevent fraud, manipulation, and deception in connection with security-based swap transactions.").

[5] See Gina-Gail Fletcher, Comment Letter on the Swaps Proposal (Mar. 21, 2022), https://www.sec.gov/comments/s7-32-10/s73210-20120658-272834.pdf.

[6] See Robert E. Bishop & Frank Partnoy, Comment Letter on the Swaps Proposal (Mar. 20, 2022), https://www.sec.gov/comments/s7-32-10/s73210-20120934-273057.pdf.

[7] See Complaint, SEC vs. Hwang et al. (Apr. 27, 2022), https://www.sec.gov/litigation/complaints/2022/comp-pr2022-70.pdf.

If the Commission nevertheless decides to proceed with equity-based SBS rules, we believe any final rules should limit any disclosure requirement to the **Commission only, not the public**, and should raise the equity-based SBS disclosure threshold significantly, in line with the Commission's enforcement action against Archegos, to a **disclosure threshold range of 30%** of the outstanding securities of the referenced issuer.[8] The comment letters overall document widespread opposition to the use of a $150/300 million threshold for equity-based SBS, and we do not believe there is support for that threshold, or for any dollar-based threshold, as opposed to a high **percentage-based threshold**, which would be more consistent with concerns in the equity-based SBS market, particularly the collapse of Archegos.[9] In any event, as we note above and as other commenters have described, we do not believe a public or one-day SBS reporting requirement can be justified or supported.[10]

The Beneficial Ownership Proposal

Second, with respect to the Beneficial Ownership Proposal, we believe, as a compromise position based on the comment letter file, that there is support for finalizing a **five-business-day Section 13(d) reporting window, but not the cash-settled derivatives and "group" proposals**. We believe that, if the Commission adopts final rules of any kind with respect to the Beneficial Ownership Proposal, it would be helpful in the final release to emphasize the Commission's understanding of current law, as reflected in the Beneficial Ownership Proposal. As we said to Staff of the Division of Corporation Finance during our in-person meeting in Washington, D.C., we believe the description of the law regarding beneficial ownership in the Beneficial Ownership Proposal was an important and helpful contribution. As with the portion of the Swaps Proposal referenced above, we believe this portion of the Release is well researched and clearly written, and provides an excellent summary of the case law regarding the definition of "group" and the bases for previous Commission enforcement actions in this area. We commend the Corporation Finance Staff for this portion of the Beneficial Ownership Proposal.

With respect to the cash-settled derivatives aspects of the Beneficial Ownership Proposal, although we believe the proposed rules regarding cash-settled derivatives are problematic,[11] we also believe guidance on cash-settled derivatives would be valuable in any final release, especially given the overlap among the three Proposals discussed here, the potential incentives for regulatory arbitrage, and the current Commission approach to distinguishing between cash-settled equity derivatives and other means of obtaining equity exposure. We believe it would be

[8] A disclosure threshold of 30% would be consistent with available evidence, including evidence related to the size of Archegos's swaps positions. See id. We do not see any basis in the comment letters, or elsewhere, for an equity-based SBS disclosure threshold of less than 20% within the regulatory framework addressed in Swaps Proposal. The approach to the disclosure threshold that we suggest also would be consistent with "large trader" reporting for "NMS Securities," and the "identifying activity levels" in Rule 13h-1 under the Securities Exchange of 1934, which take into account aggregate market data. See Responses to Frequently Asked Questions Concerning Large Trader Reporting, https://www.sec.gov/divisions/marketreg/large-trader-faqs.

[9] See Robert E. Bishop & Frank Partnoy, Comment Letter on the Swaps Proposal (Mar. 20, 2022), https://www.sec.gov/comments/s7-32-10/s73210-20120934-273057.pdf.

[10] See id.

[11] See Robert E. Bishop & Frank Partnoy, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf.

particularly helpful for any final release to emphasize that counterparties to cash-settled derivatives are deemed beneficial owners under existing law **only if they have the requisite voting and investment power**.[12] These requirements are consistent with prior case law, as well as Commission enforcement actions in this area.[13] We believe the Beneficial Ownership Proposal, like the Swaps Proposal, already has accomplished many of the Commission's objectives, given the responsive discussions and comments related to cash-settled derivatives.

With respect to the "group" definition aspects of the Beneficial Ownership Proposal, we note that the opposition to the final rules in this area has been overwhelming and diverse, from labor interests to free speech advocates to board diversity proponents to free market-oriented economists to mainstream progressives to ESG experts, in addition to various trade associations and financially interested parties.[14] We share the concerns raised in these letters, and continue to believe that the new proposed "group" definition should be tabled.

We agree with the Staff's description of the existing case law regarding the definition of "group." We believe this case law, which generally, but not always, focuses on whether an agreement exists – written, oral, formal, or informal – has been viewed by the market as adequately clear, and has not inhibited legitimate transactions and communications. We also believe the new proposed "group" definition would substantially increase the level of market uncertainty and inhibit healthy market activity, as market participants (particularly financial institutions) understandably would be unwilling to run the risk of an unfavorable interpretation.[15] In our view, any such new rule also likely would encourage litigation, and unfortunately would be responding to unsubstantiated rumors regarding market practice.[16] Accordingly, we urge the Commission not to adopt a new final rule regarding the definition of "group."

The Short Proposal

Third, with respect to the "Short Proposal," we believe the Commission should delay implementation of any final rules and instead hold one or more roundtable discussions and gather data regarding the appropriate timing and thresholds for any new short sale disclosure requirements. The regulation of short selling historically has been driven by populist overreactions to isolated concerns about short sellers, and, overall, short selling has been shown

[12] See id.
[13] See id.
[14] The comment letters from academics that specifically point to problems with the "group" definition were from a wide range of perspectives. See, e.g., 65 Law and Finance Professors, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123313-279608.pdf; Benjamin Edwards, Sarah C. Haan, Cary Martin Shelby, Geeyoung Min & Faith Stevelman, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123317-279611.pdf; David H. Webber, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123321-279614.pdf.
[15] See Robert E. Bishop & Frank Partnoy, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf.
[16] See id.

to generate significant benefits for financial markets, as described in the comment letter from academics that we assisted with drafting and filing.[17]

If the Commission adopts final rules related to short selling, we hope any guidance and commentary in its final release will emphasize the widespread benefits of shorting, as evidenced in the academic literature.[18] But we hope the Commission will avoid imposing significant new costs on short sellers. In our opinion, the academic literature does not support the Short Proposal.

The New WLRK "Group" Proposal

On October 4, 2022, WLRK submitted a supplemental comment letter related to the "group" definition.[19] We focus on five paragraphs near the end of this letter, where the firm proposed a new version of this definition that we believe is even more problematic than the proposed definition in the Beneficial Ownership Proposal.[20]

WLRK's proposal to amend Rule 13d-5[21] appears in footnote 56 of its letter. We set forth the language in that footnote in full below:

> In order to alleviate those concerns and to conform the text of the proposed Rule to the description of it in the Release at, for instance, pages 11, 84-88, we suggest that the following italicized words be added to the proposed Rule 13-5(b)(1)(ii) [sic]:
>
> A person that is or will be required to report beneficial ownership on Schedule 13D who, in advance of making such filing, directly or indirectly discloses to any other market participant the non-public information that such filing will be made, acts as a group with such other person or persons within the meaning of section 13(d)(3) of the Act to the extent such information was shared with the purpose of causing such other person or persons to acquire equity securities of the same class for which the Schedule 13D will be filed *and in response to this inducement such other person or persons acquire such equity securities before such filing*, and such group will be deemed to have acquired any beneficial ownership held in the same class by its members as of the earliest date on which such other person or persons acquired beneficial ownership based on such information. *If the person who receives such an inducement is a passive investor who is required to file on Schedule 13F or 13G and has done so before the meeting at which the inducement is made, the presumption shall be that the person is not a member of the group unless it is proven by clear and convincing evidence that any purchases made before the filing of the Schedule 13D by the party making the inducing statements were*

[17] See Barbara Bliss, Joey Engelberg, Jonathan M. Karpoff, Peter Molk, Terrance Odean, Adam V. Reed & Matthew C. Ringgenberg, Comment Letter on the Short Proposal (Apr. 25, 2022), https://www.sec.gov/comments/s7-08-22/s70822-20126591-287247.pdf..
[18] See id.
[19] See Wachtell, Lipton, Rosen & Katz, Comments on the Beneficial Ownership Release (Oct. 4, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20145487-310717.pdf.
[20] See id. at 15-17.
[21] The WLRK letter refers to 13-5(b)(1)(ii) [sic], but we assume the intended proposal would be to amend Rule 13d-5.

made directly in response to the inducement and on the basis of the non-public information conveyed.

As noted above, previous comment letters and discussions made it clear to us that the proposed "group" definition was viewed as impractical and difficult, if not impossible, for a range of market participants, and their lawyers, to implement. In addition, our understanding was that sophisticated lawyers uniformly had agreed that if the language in the new proposed "group" definition were adopted, it would be difficult or impossible to advise clients about the scope of the beneficial ownership provisions in "poison pills," which track Commission rules, or even to advise clients about when a "poison pill" likely would be triggered.[22] Our further understanding was that sophisticated market participants also would be unable to determine which of their activities related to shareholder activism could potentially be covered by the new "group" definition.

We believe WLRK's new proposal, if it were properly noticed for comment by the Commission, would generate even more opposition than the initially proposed amendments to the "group" definition. WLRK's new proposal repeatedly uses the term "*inducement*" (italics in original), and its letter suggests that the use of this language somehow might comfort the investors who have objected to the proposed changes in the "group" definition. But the use of this term is fraught. For example, the letter's first use of "inducement" refers back to the phrase "with the purpose of causing," thereby creating additional ambiguity as to whether the relevant mental state required by the new WLRK rule would be that of the giver of information, or the receiver of information, or both.[23] The letter's next two uses of "inducement" refer to a "meeting," which also is undefined.[24] The final sentence of the new proposed language purports to provide comfort to some unspecified category of "passive investors" by requiring a high standard of proof ("clear and convincing evidence") and by deeming such investors to be members of a "group" only for purchases made "directly in response to" an inducement.[25] This sentence introduces further ambiguity about the meaning of these terms.

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[22] The WLRK letter states that a 1985 Delaware case approving the use of a poison pill defense "is applicable here" and supports its new proposed "group" definition: "Another reason why do not believe [sic] that the proposed amendments to Rule 13d-5 can be read in the distorted way that some fear is that there is a lineage in this space." Id. at 16-17. The WLRK letter states: "The Delaware Supreme Court made clear that the granting of a revocable proxy did not make the giver an affiliate of the bidder under the rights plan." Id. at 17. But the letter does not address how this case, or its progeny, might clarify questions about whether meetings or conversations would make an investor a member of a "group." We believe the relevant judicial "lineage" was accurately described by the Staff in the Beneficial Ownership Proposal.

[23] See id. at 16 n.56. It also is unclear from the new proposed rule whether "causing" and "inducement" have different meanings. See id.

[24] See id.

[25] See id. Under WLRK's proposal, the presumption would be that a person is not a member of a "group" if "*the person who receives such an inducement is a passive investor who is required to file on Schedule 13F or 13G and has done so before the meeting at which the inducement is made.*" Id. What if the investor is a new institution that has not yet filed a Schedule 13F or 13G? What if the person is required to file a Schedule 13F but also has filed a Schedule 13D in the past? Is such a person a "passive investor"

Many commentators have noted the ambiguities and uncertainties arising from the new "group" definition in the Beneficial Ownership Proposal. Indeed, many of the examples we previously set forth to illustrate situations where investors might have concerns about certain discussions or activities apply to the new WLRK proposal.[26] Specifically, we believe the new WLRK definition would create even more ambiguity and uncertainty than the Beneficial Ownership Proposal as to whether otherwise common and socially beneficial investor behavior would violate the law. For example, what would future investors conclude about whether the following communications and activities might lead them to be deemed part of a "group"?:

- Investor discussion that "induced" support of diverse board candidates
- Investor discussion that "induced" support of climate change initiatives at a company
- Investor discussion that "induced" support for a "vote no" campaign
- Discussions between pension funds and other investors that "induced" support of workers and labor interests
- Activities between investors and shareholder activists that "induced" support for ESG reforms at a company
- Activities by investors that later appear to have been "induced" support for the purpose and objectives of shareholder activists
- Activities by investors who are "induced" to later unite with shareholder activists with respect to campaigns to reduce the externalization of costs at a company
- Communications or activities "inducing" investors to support any institution that has a reputation for holding managers accountable
- And so on

We note that the above problems with the proposed "group" definition can be situated with the academic literature on rules vs. principles.[27] Crafting specific rule language defining

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for purposes of this rule? What if the person filed only a Schedule 13F, but not a Schedule 13G, and the Schedule 13F did not yet list the applicable equity securities? What if it is unclear precisely when the inducement is made during a series of meetings? Can a person be a "passive investor" with respect to some equity securities, but not others? Is a person who is below the Schedule 13F and 13G thresholds not entitled to this presumption? How are swaps, cash-settled derivatives, and other equity derivatives treated under this exception? The questions raised by WLRK's proposal echo questions that have arisen in other areas of securities regulation (e.g., the meaning of personal benefit in insider trading cases), where the meaning of particular words have befuddled the courts for years, even after interventions by the Supreme Court, as litigants pursue various interpretations in particular cases. In our opinion, the ambiguities in WLRK's proposal would invite similar mischief.

[26] See Robert E. Bishop & Frank Partnoy, Comment Letter on the Beneficial Ownership Proposal (Apr. 11, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf.

[27] The distinction between specific rules and general principles has been an important part of academic thinking for decades. See Ronald Dworkin, The Model of Rules I, in Taking Rights Seriously 14 (1997); H. L. A. Hart, The Concept of Law (1994). Specifically, the rules-principles distinction has engaged scholars researching aspects of securities regulation. See, e.g., William W. Bratton, Enron, Sarbanes-Oxley and Accounting: Rules Versus Principles Versus Rents, 48 Villanova Law Review 1023 (2003) (discussing the rules-principles distinction related to the collapse of Enron); Frank Partnoy, The Timing and Source of Regulation, 37 Seattle University Law Review 423 (2014) (discussing the rules-principles

"group" is difficult, because the nature of this particular legal categorization is naturally more amenable to *ex post* than *ex ante* specification. The rules-principles debate has had traction among many drafters of legal rules (including Commission rules) for good reason: some phenomena are better described through a case-by-case common law-style approach than by specified rule language. The definition of "group" is better suited to an *ex post* common law-style approach.

Accordingly, the concerns that so many commentators have raised with respect to the proposed "group" definition illustrate why policy makers previously have followed a common law approach to the definition of "group," rather than trying to define "group" more specifically through rules. The Commission has long relied on an iterative approach based on broad principles in this area, and that approach is still warranted here. The Beneficial Ownership Proposal already has achieved an important policy objective based on the Staff articulating an accurate and cogent view of the case law on the definition of "group." We believe it would be sufficient for the Commission to note in guidance in the preface to any final rules shortening the Section 13(d) window that it has reviewed the comment letter file and intends to enforce the "group" definition as it stands.

Shareholder Activism and Employment

Finally, we note that some recent commenters[28] have pointed to a study purporting to show a decline in company workforce size following an activist intervention,[29] even though a simple analysis of the data, not undertaken in that study, shows that employment levels at firms targeted by activists decrease substantially in the years **prior to** an activist intervention, violating the parallel trends assumption that is required to make any sort of causal inference from the empirical design.[30] This decrease in employment prior to an activist intervening is consistent with a conclusion that activists target firms that already are struggling, not a conclusion that activists cause firms to struggle.

Any researcher trained in econometric methods could easily construct a balanced sample using matching and weighting where the parallel trends assumption is satisfied. We did so, and

distinction in the context of securities regulation); see also Frank Partnoy, Comments on Joint Proposed Rule: Customer Margin Rules Relating to Security Futures, Release No. 34-44853, File No. S7-16-01 (Sep. 25, 2001), https://www.sec.gov/rules/proposed/s71601/partnoy1.htm (discussing the potential for a principles-based approach to margin requirements for security futures).

[28] See AFL-CIO & Various Labor Unions, Comment Letter on the Beneficial Ownership Proposal and the Swaps Proposal (June 6, 2022), https://www.sec.gov/comments/s7-06-22/s70622-20130305-296963.pdf; United States Senators Tammy Baldwin, Sherrod Brown, Bernard Sanders, Elizabeth Warren, Tammy Duckworth & Jeffrey A. Merkley, Comment Letter on the Beneficial Ownership Proposal and the Swaps Proposal (July 18, 2022), https://www.sec.gov/comments/s7-32-10/s73210-20134696-305888.pdf.

[29] See Mark DesJardine & Rodolphe Durand, Disentangling the Effects of Hedge Fund Activism on Firm Financial and Social Performance, 41 Strategic Management Journal 1054 (2020).

[30] See Marianne Bertrand, Esther Duflo & Sendhil Mullainathan, How Much Should We Trust Differences-in-Differences Estimates?, 119 Quarterly Journal of Economics 249 (2004).

find no change in employment following an activist intervention. We are happy to provide the Commission with further detail on this and other analyses.[31]

In sum, we believe there is a clear, straightforward compromise position for the Commission to take in finalizing rules related to the above Releases: adopt only (1) a **final anti-fraud rule for securities-based swaps**, and (2) a **final rule shortening the 13D disclosure window to five business days**, and **table the other aspects of these proposals**. We thank the Commission for its consideration of our comments.

Respectfully,

/s/ Robert E. Bishop

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Center for Law and Business

/s/ Frank Partnoy

Frank Partnoy
Adrian A. Kragen Professor of Law
UC Berkeley School of Law
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[31] More broadly, even if the findings of this study were accurate, the commenters do not explain how considering firm employment levels fits within the Commission's "mission . . . to protect investors; maintain fair, orderly, and efficient capital markets; and facilitate capital formation." See https://www.sec.gov/about.shtml.