



S O U T H E R N  
M E T H O D I S T  
U N I V E R S I T Y

*Marc I. Steinberg*

Rupert and Lillian Radford Professor of Law

**Re: File No. S7-06-22 (Modernization of Beneficial Ownership Reporting)**

The Modernization of Beneficial Ownership Reporting is long overdue. I am pleased that, with its proposal, the Commission evidently will take some corrective action in this important matter.

The Proposal has a glaring defect. The proposal would only shorten the Schedule 13D initial filing deadline from ten to five days. A five-day period is far too long and does not correct the problem that currently exists with respect to the marketplace being timely alerted to potential changes in corporate control. Rather, the recommendations set forth in my recent Oxford University book *Rethinking Securities Law* (2021) should be adopted. This book has been awarded by American Book Fest as the sole Winner—Best Law Book of 2021. As stated therein (at page 252):

“...[T]he federal securities laws should close this [ten-day] loophole by lowering this five percent threshold to three percent and by prohibiting accumulation above the three percent level until one business day after a Schedule 13D filing has been made.

In this setting, three percent accumulation should be sufficient to mandate a Schedule 13D filing. Whether a buyer is contemplating holding for investment, becoming an active shareholder, or launching a takeover bid, the market frequently will value that information and deem it material. In this situation, the buyer in fact may be legally trading on material nonpublic information that it has generated. Although this practice arguably should be entirely prohibited, an effective solution is to lower the ownership threshold to three percent. Absent the presence of a controller, three percent ownership in a national securities exchange listed company is significant. Accordingly, once a person reaches that level, it should be required to file within twenty-four hours a Schedule 13D with the SEC and thereafter wait at least one business day before being permitted to make additional purchases.”

The proposal set forth above should be adopted by the Commission. Thank you for your consideration.

Sincerely,

Marc I. Steinberg  
Radford Chair in Law and Professor of Law

School of Law

PO Box 750116 Dallas TX 75275-0116

214-768-4072 Fax 214-768-4330