

April 11, 2022

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

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

Dear Ms. Countryman,

I am a Professor of Law and the Paul M. Siskind Scholar at Boston University Law School. I am the author of *THE RISE OF THE WORKING-CLASS SHAREHOLDER: LABOR'S LAST BEST WEAPON* (Harvard University Press 2018), a book arguing that workers' ownership of shares, primarily through pension funds, could be a source of power and leverage in labor's battle against corporate managers. I have written widely on topics related to the shareholder rights of labor interests.<sup>1</sup>

I write regarding the proposed rules relating to the Modernization of Beneficial Ownership Reporting presented in Release Nos. 33-1103; 34-94211 ("Proposed Beneficial Ownership Rules").<sup>2</sup> I previously submitted a comment on the proposed rules relating to the prohibition against fraud, manipulation, or deception in connection with security-based swaps; prohibition against undue influence over chief compliance officers; and position reporting of large security-based swap positions presented in Release No. 34-93784 (the "Proposed Swaps Rules," together with the Proposed Beneficial Ownership Rules, the "Proposed Rules"). Given the interlocking nature of the rule proposals, it is difficult to disentangle the two proposals and the impact they likely would have, including increased costs that could be passed on to shares owned directly and indirectly by workers. The Commission should read any comment letters on the Proposed Beneficial Ownership Rules in tandem with comment letters on the Proposed Swaps Rules.

I have reviewed the recent comment letter from prominent academics arguing that the Proposed Rules may limit the ability of shareholders to engage with corporate directors and management.<sup>3</sup> Shareholders serve an important role in disciplining management. Whatever problems we may face in America, we should all agree that an overabundance of corporate accountability is not one of them.

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<sup>1</sup> See David H. Webber, *The Use and Abuse of Labor's Capital*, 89 N.Y.U. L. Rev. 2106, 2106 (2014); David H. Webber, *Is "Pay-to-Play" Driving Public Pension Fund Activism in Securities Class Actions? An Empirical Study*, 90 B.U. L. Rev. 2031, 2032-36 (2010).

<sup>2</sup> An early draft of this comment letter was drafted by staff of the International Institute of Law and Finance, a non-profit, non-partisan corporation.

<sup>3</sup> See Comment Letter from 85 Law and Finance Professors.

In my research, I document evidence that activists working in their different silos can benefit from combining their interests to form a unified front.<sup>4</sup> There are numerous examples of pension funds benefiting from partnerships with shareholder activists, as in the campaign to pressure Apple Inc. to examine more closely the effects of phone screen time on children. I also have written about pension fund efforts on behalf of worker representation and worker pay, efforts that the Proposed Beneficial Ownership Rules could chill, not only when a shareholder activist already is involved at a targeted company but more generally because of the risk that investors could be deemed a member of a “group” with a shareholder activist after the fact. Advocates for workers should not labor under a cloud of such uncertainty and risk. In addition, workers who invest in the stock market, either through pension plans or in their own personal accounts, benefit from shareholder activism to the extent it is associated with increased financial returns, as the literature cited in the Comment Letter from 85 Law and Finance Professors suggests.

I was disappointed to see that the economic analysis contained in the Proposed Beneficial Ownership Rules made no attempt to address the effects that the Proposed Rules could have on further insulating management from accountability. Moreover, I have serious concerns that the proposed amendments to Rules 13d-5 and 13d-6, which define when persons will be deemed to have formed a “group” that would be subject to beneficial ownership reporting obligations, will chill communications between labor groups and active shareholders who might be able to help hold management accountable and further labor interests. The Release itself acknowledges the potential for this issue.<sup>5</sup>

President Biden has made clear that his Administration supports the advancement of workers’ interests.<sup>6</sup> The Commission should not take steps contravening that mission.

Thank you for your consideration.

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<sup>4</sup> See David H. Webber, *THE RISE OF THE WORKING-CLASS SHAREHOLDER: LABOR’S LAST BEST WEAPON*, Ch. 2 (describing the role of labor’s capital in filing, and winning, virtually all the shareholder proposals regarding proxy access, majority voting, and de-staggering corporate boards).

<sup>5</sup> See Release, at 90 (“We recognize that our proposal to amend Rule 13d-5, as discussed above, may raise concerns among investors as to whether their communications and other activities with other investors would constitute the formation of a group. We also recognize the possibility that additional exemptions may be warranted to address situations in which beneficial ownership reporting under Section 13(d) or 13(g) by a group would be unnecessary from an investor protection standpoint or even contrary to the public interest. Specifically, we are aware that activity exists among shareholders, investors, holders of derivatives and other market participants that may, absent an exemption, implicate Sections 13(d)(3) and 13(g)(3). For example, institutional investors or shareholder proponents may wish to communicate and consult with one another regarding an issuer’s performance or certain corporate policy matters involving one or more issuers. Subsequently, those investors and proponents may take similar action with respect to the issuer or its securities, such as engaging directly with the issuer’s management or coordinating their voting of shares at the issuer’s annual meeting with respect to one or more company or shareholder proposals.”).

<sup>6</sup> See, e.g., President Joseph R. Biden State of the Union Address (March 1, 2022) (“When we invest in our workers, when we build the economy from the bottom up and the middle out together, we can do something we haven’t done in a long time: build a better America.”).

Respectfully,

David H. Webber  
Professor of Law and Paul M. Siskind Scholar  
Boston University School of Law