

Under current SEC rules, institutional investors purchasing shares through brokers and banks (called “beneficial owners”) are required to disclose any ownership interest they may have in a public company once such ownership interest exceeds 5% of outstanding shares. This disclosure is accomplished by filing a beneficial ownership interest report with the SEC on Schedule 13D. This report is required to be filed within 10 calendar days after a beneficial owner crosses the 5% threshold. This 10-day deadline has been in effect and unchanged since 1968. Acquiring large blocks of shares secretly for such a long period of time allows these investors to trade on asymmetric price information and continue accumulating shares from unwitting investors for almost two weeks after the 5% threshold is reached.

Further, as we saw with Archegos, cash-settled derivatives are exempted from disclosure requirements because the holders of these derivatives are not considered beneficial owners. The SEC explains that often the holders of these derivatives are still able to exert influence over the company, as the counterparty to the derivative is often holding the underlying securities. To modernize this disclosure framework and prevent another Archegos from happening, the SEC has proposed an important set of rule updates that we support.

Our comment letter pushes the SEC to go even further with a 2 day disclosure deadline. We also support the new derivative disclosure requirement, while asking the SEC to clarify that such holders, despite being deemed beneficial owners for the purposes of this rule, would not result in any change to the voting rights or investment powers of the underlying reference securities that are the basis for these types of swaps.

If you agree with it, please join us in our mission to increase transparency by writing your own comment letter (feel free to take any parts of ours you want) or by simply signing your name and filing this letter. There is strength in numbers, and it's time to show the SEC that individual investors have the numbers.

Signed,  
Ian Cannon