

March 21, 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**

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 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").<sup>2</sup> I might also write to comment on the proposed rules on the modernization of beneficial ownership reporting presented in Release No 34-9421 (the "Proposed Beneficial Ownership 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 future 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 Swaps Rules may limit the ability of shareholders to engage with corporate directors and management. 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.

---

<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.

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>3</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. 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 by law and finance professors suggests. Moreover, to the extent pension funds use swaps, including for hedging purposes, the Proposed Swaps Rules disclosure thresholds would apply to them and could increase their compliance and transaction costs.

I was disappointed to see that the economic analysis contained in the Proposed Swaps Rules made no attempt to address the effects that the Proposed Swaps Rules could have on further insulating management from accountability. President Biden has made clear that his Administration supports the advancement of workers' interests.<sup>4</sup> The Commission should not take steps contravening that mission.

Thank you for your consideration.

Respectfully,

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

---

<sup>3</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>4</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.").