



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

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April 11, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

**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; File No. S7-32-10]**

Dear Ms. Countryman:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comments to the U.S. Securities and Exchange Commission in response to the notice of proposed rulemaking on the Modernization of Beneficial Ownership Reporting [Release Nos. 33-11030; 34-94211; File No. S7-06-22] and on the 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; File No. S7-32-10]. The AFL-CIO is a federation of 57 national and international labor unions that represent 12.5 million working people. Union members participate in the capital markets as individual investors as well as participants in pension and employee benefit plans.

We strongly support the Commission's proposed amendments to beneficial ownership reporting requirements and the reporting of large security-based swap positions as a simple matter of market transparency. The Beneficial Ownership Reporting proposed rule amendments will help close longstanding loopholes in the disclosure requirements for investors that hold more than 5 percent of a company's stock by shortening the Schedules 13D and 13G filing deadlines from 10 days to 5 days. In addition, the Position Reporting of Large Security-Based Swap Positions proposed Rule 10B-1 will require disclosure of security-based swaps positions that would otherwise allow an investor to avoid disclosure of their true economic interest in a company's stock on Schedules 13D and 13G.

Schedules 13D and 13G provide transparency to the investing public regarding shareholders who take a significant stake in a company. Large investors are required to file either Schedules 13D or 13G when they acquire more than 5 percent of a company's stock. Large investors may file a Schedule 13G when they have no intention of influencing the control of the company. In contrast, large investors who file a Schedule 13D must disclose the purpose of their transaction such as a merger, reorganization, or liquidation of the company. This Schedule 13D disclosure requirement dates back to passage of the Williams Act in 1968 that was intended to curb abusive changes in corporate control without adequate disclosure of information to investors. And yet, despite radical advances in information technology since the Williams Act was first adopted, the Schedule 13D filing requirements are still 10 days after the reaching the disclosure threshold.

Elon Musk's recent acquisition of a 9.2 percent stake in Twitter, Inc. dramatically illustrates the importance of timely beneficial ownership disclosure to protect the investing public. Twitter's share price surged 27 percent on the news of Mr. Musk's stock purchase that he disclosed by filing a Schedule 13G on April 4, 2022. Setting aside questions of whether Mr. Musk's Schedule 13G filing was timely or should have been disclosed on Schedule 13D, Twitter shareholders were deprived of material information during the delay between when Mr. Musk first acquired and then disclosed his 5 percent share position. Any investor who sold shares of Twitter during this delay period arguably was deprived of a share price premium that they would have received had Mr. Musk's disclosure been made when he first acquired a 5 percent position. We are not persuaded that a 10-day delay in beneficial ownership disclosure after acquiring a 5 percent stake is needed to incentivize Mr. Musk or any other large investor to be an activist investor.

Fairness dictates that large investors should not be able to circumvent their Schedule 13D and 13G disclosure requirements by entering into cash-settled derivatives or security-based swaps. Such transactions can permit a large investor to acquire an economic interest in a company's stock in excess of 5 percent without having to file a Schedule 13D or 13G. To prevent such gamesmanship, we support the Commission's proposed disclosure of cash-settled derivative securities on Schedule 13D as well as the proposed Rule 10B-1 that will require disclosure of security-based swaps. Such disclosure will provide market participants and regulators with greater transparency when a large investor is accumulating a substantial position in a company's stock. We also support the Commission's proposed Rule 9j-1 to prevent fraud, manipulation and deception through the use of security-based swaps. Security-based swaps played a leading role in the 2008 Wall Street financial crisis and should be subject to appropriate regulatory oversight.

For these reasons, we are pleased to support the Commission's proposed amendments to beneficial ownership reporting and the reporting of large security-based swap positions. Thank you for the opportunity to share our views. If the AFL-CIO can be of further assistance, please contact me at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'Brandon J. Rees', written in a cursive style.

Brandon J. Rees
Deputy Director, Corporations and Capital Markets