

June 27, 2023

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 (“Beneficial Ownership Proposal”);**

**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 (“Swaps
Proposal”); and**

**File No. S7-08-22; Release No. 34-94313, Short Position and Short Activity
Reporting by Institutional Investment Managers (“Short Proposal”)**

Dear Ms. Countryman,

We are officers of the International Institute of Law and Finance (“IILF”),¹ a non-profit, non-partisan institution dedicated to promoting independent research, academic papers, teaching, discussion, and public policy initiatives in law and finance. We have drafted and submitted comment letters on the above Releases, with the objective of putting academic views and research in front of the Commission.² We thank the Commission for the opportunity to comment on these Releases, and we thank the Commission Staff for meeting and speaking with us.

We write now in response to the Memorandum dated April 28, 2023 from Staff of the Division of Economic and Risk Analysis regarding “Supplemental data and analysis on certain economic effects of proposed amendments regarding the reporting of beneficial ownership” (“DERA Memo”).³ We believe that the DERA Memo is consistent with the approach we previously have recommended: (1) **adopt a final rule shortening the Section 13(d) disclosure window to five business (or trading) days**, and (2) **table the cash-settled derivatives and “group” aspects of the Beneficial Ownership Proposal**.⁴ We thank the DERA Staff for their work responding to questions and concerns we and others have raised in prior comment letters.⁵

¹ See <https://iillawfin.org> for a description of our mission and our role.

² As described more fully on the IILF website, we receive compensation for our IILF activities, including drafting the comment letters described herein.

³ See DERA Memo, <https://www.sec.gov/comments/s7-06-22/s70622-20165251-334474.pdf>.

⁴ See IILF Comment Letter, Nov. 1, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20149127-316318.pdf>.

⁵ We also applaud the Staff of the Division of Corporation Finance and Director Erik Gerding for ongoing engagement, candor, and attention to detail with respect to the above Proposals. In particular, we appreciate the willingness of Ted Yu, Associate Director (Specialized Policy and Disclosure), Division of Corporation Finance, to answer questions publicly regarding these Proposals on April 26, 2023. See <https://www.theberkeleyforum.com>. We

We make four points about the DERA Memo.

First, the DERA Memo **does not contain economic analysis or data supporting the cash-settled derivatives or “group” aspects** of the Beneficial Ownership Proposal.

Second, the economic analysis and data in the DERA Memo provides **at most limited support for narrowing the Section 13(d) window**. We agree with the numerous caveats and qualifications in the DERA Memo and we applaud DERA for its forthrightness about the limitations of its analysis and data.⁶ We also supplement the record with additional analysis and data to show that, based on the DERA Memo’s formulation of “harm,” narrowing the Section 13(d) window would “harm” investors overall. Nevertheless, we would **accept a final rule shortening the Section 13(d) disclosure window to five business (or trading) days** as a reasonable middle-ground compromise position on the issue.

Third, the DERA Memo is consistent with our recommendation that any changes to the Section 13(d) window should be based on **business (or trading) days, not calendar days**.

Fourth, the DERA Memo includes several **unsupported and speculative assertions about “information asymmetry”**.⁷ The Beneficial Ownership Proposal included similar assertions, and our previous responses, incorporated herein, apply equally to the DERA Memo.⁸

Nothing on Cash-Settled Derivatives or the “Group” Definition

As the DERA Memo notes, it is based on a comprehensive review by DERA Staff of the entire comment file, including comment letters, additional data, and existing research on beneficial ownership and shareholder activism.⁹ According to the DERA Memo, it was prepared

believe those remarks provide strong support for the approach we endorse here. We urge the Commission to consider those remarks as part of the comment file, and we incorporate them herein. See <https://www.youtube.com/watch?v=o8K5LEeGEME>.

⁶ Given the caveats and qualifications in the DERA Memo, we believe it is important for any final rulemaking to include more detail about the analysis and data in the DERA Memo, or any other economic analysis the Commission relies on, so that the support for the rulemaking can be replicated and analyzed. We also note that the analysis in the DERA Memo is not based on publicly available information that is frequently used in the academic literature, such as the SharkRepellent dataset from FactSet and NYSE Trade and Quote Data. We use these data in our supplemental analysis, which is straightforwardly replicable.

⁷ See, e.g., DERA Memo at 8, 21 & 27 (referencing “information asymmetry”).

⁸ Specifically, as we previously have noted, any new rulemaking efforts focused on such concerns would be a substantial departure from past regulatory policy, and an abrupt policy pivot from the Commission’s own positions over time. See Comment Letter from Robert E. Bishop and Frank Partnoy, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf>.

⁹ See DERA Memo at 1 (“After reviewing the comments provided, additional data, and existing research on beneficial ownership and activism, staff in the Division of Economic and Risk Analysis prepared this memorandum to provide supplemental analysis related to the proposed rules’ economic effects.”). The DERA Memo spans 27 pages, with 79 footnotes, and it cites broadly to the academic literature and comment letters, including those drafted by IILF staff. Numerous comments on the Beneficial Ownership Proposal addressed the cash-settled derivatives and “group” aspects of the Beneficial Ownership Proposal. See, e.g., Comment Letter from Robert E. Bishop and Frank Partnoy, Nov. 1, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20149127-316318.pdf> (discussing issues other than the filing deadline); Comment Letter from Robert E. Bishop and Frank Partnoy, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf> (same).

for a purpose that was as comprehensive as its review: “to provide supplemental analysis related to the proposed rules’ economic effects.”¹⁰ Notably, the DERA Memo **does not contain economic analysis or data supporting the cash-settled derivatives or “group” aspects** of the Beneficial Ownership Proposal.¹¹

The DERA Memo is narrowly focused on “two specific points pertaining to Schedule 13D and 13G filings.”¹² Both of these points are explicitly described as relating to the Section 13(d) “filing deadline.”¹³ They are not related to the cash-settled derivatives or “group” issues. Given the broad expertise among DERA Staff, and their access to data, we find this narrowing of the analysis to the Section 13(d) window and the filing deadline notable and important. We also have examined the comment file, additional data, and existing research, and we find no reliable economic data or analysis supporting the cash-settled derivatives¹⁴ and “group” definition¹⁵ aspects of the Beneficial Ownership Proposal.

We believe the absence of reliable support for these two aspects of the Beneficial Ownership Proposal sends a clear message: the Commission should not issue final rules in these two areas. In our view, these proposals likely would not withstand judicial review and would be bad policy in any event. Accordingly, we urge the Commission to table these aspects of the Beneficial Ownership Proposal.¹⁶

¹⁰ DERA Memo at 1. Obviously, “rules” is plural, and we note that the DERA Memo provides no supplemental analysis of the proposed rules related to either cash-settled derivatives or “group.” We also applaud the DERA Memo for not relying on several publications we and others previously criticized for making unfounded and unreliable assertions. See, e.g., Comment Letter from 65 Law and Finance Professors, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123313-279608.pdf> (assessing claims in the academic literature); Comment Letter from Robert E. Bishop and Frank Partnoy, Nov. 1, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20149127-316318.pdf> (same).

¹¹ We further note that the DERA Memo does not cite, discuss, or mention any potential relationship between shareholder activism and employment, or the flawed research that some commenters have cited related to shareholder activism and employment. We reincorporate here our analysis with respect to this issue. See Comment Letter from Robert E. Bishop and Frank Partnoy, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf>.

¹² See DERA Memo at 1. The DERA Memo describes the two specific points as: (1) investigating “potential effects on activism that may result from the proposed and potential harms to current change to the initial Schedule 13D filing deadline” and (2) “additional analysis of potential harms to certain selling shareholders under the existing filing deadline.” Id.

¹³ See id. (referencing “the initial Schedule 13D filing deadline” and “the existing filing deadline”).

¹⁴ We believe it would be particularly helpful for any final release to emphasize that counterparties to cash-settled derivatives are deemed beneficial owners under existing law only if they have the requisite voting and investment power. These requirements are consistent with prior case law, as well as Commission enforcement actions in this area. We believe the Beneficial Ownership Proposal, like the Swaps Proposal, already has accomplished many of the Commission’s objectives, given the responsive discussions and comments related to cash-settled derivatives.

¹⁵ We note that the opposition to the final rules with respect to the “group” definition has been overwhelming and diverse, from labor interests to free speech advocates to board diversity proponents to free market-oriented economists to mainstream progressives to ESG experts, in addition to various trade associations and financially interested parties. We share the concerns raised in these letters, and continue to believe that the new “group” definition should be tabled.

¹⁶ We note that the Commission recently followed a similar approach in adopting a final anti-fraud rule for securities-based swaps, without adopting all of the proposed rules in the Swaps Release, and we commend the Commission for this approach. See Chair Gary Gensler, Statement on Rule 9j-1 and Rule 15fh-4(c), Jun. 7, 2023,

Limited Support for Narrowing the Window; Supplemental Analysis and Data

Second, with respect to the two substantive topics addressed in the DERA Memo (the investigation of potential effects on activism and additional analysis of potential harms to selling shareholders from the proposed changes to the Section 13(d) window), we offer supplemental analysis and data below that we hope will clarify the discussion of the relevant academic research and quantitative analysis. Much of the analysis and data in the DERA Memo includes caveats and qualifications, which we applaud the DERA staff for including, and many of the approaches are described in ways that are not replicable.¹⁷ Accordingly, we believe supplemental data and analysis are necessary and helpful.

As noted above, the DERA Memo asserts that there is “harm” to some sellers based on abnormal trading volume by traders other than the 13D filer during the dates between the fifth day after the filer crosses the five percent threshold and the actual filing date.¹⁸ However, there is no support in the DERA Memo for the assertion that purchasers other than the 13D filer are more informed than sellers during the relevant period. Nor is there any description of the likely characteristics of supposedly “harmed” sellers. We demonstrated in one of our previous comment letters, cited in the DERA memo, that the sellers are not likely to be retail investors.¹⁹ The DERA Memo cites a peer-reviewed study introducing the algorithm for identifying retail order flow that we used,²⁰ and there is no suggestion in the DERA Memo that our study was inaccurate.

In contrast to the DERA Memo, which improperly assumes that all trades less than the activist’s purchases during the five days after an activist crosses the 5% trigger are “harmed,” our supplemental analysis below separates any allegedly “harmed” selling—under DERA’s own formulation of “harm”—from other trading (including trades that benefit from the announcement of activism).²¹ We do so by computing **abnormal net selling** using signed trades based on data that are available to the public, and methodologies established in the academic literature.²² We

<https://www.sec.gov/news/statement/gensler-statement-security-based-swaps-060723>. We also believe the Commission can achieve many of the objectives articulated in the Beneficial Ownership Release by including guidance in the preface to any final rules articulating how the Commission’s current rules continue to prohibit problematic conduct. The Beneficial Ownership Release already has been influential, and we believe guidance could accomplish the Commission’s policy objectives without expansive final rules.

¹⁷ We note that the DERA Memo includes more than a dozen references to “programmatically text analysis.” See, e.g., DERA Memo at 3 nn. 6-8, 10; 4 n. 12; 5 nn. 15, 17; 7 n.21; 15 nn.48, 50; 17 n.51; 22 n.66; & 25 n.71. We were unable to replicate the estimates and conclusions derived from this approach. Likewise, there are more than a dozen references to “manual review,” and we were unable to replicate the conclusions derived from these approaches. See, e.g., 4 n.11. We have no way of determining whether the various conclusions based on these approaches are accurate or reliable. Instead, we supplement the comment file with additional, replicable analysis.

¹⁸ See DERA Memo at 23.

¹⁹ See *id.* at 27 n.78.

²⁰ See *id.*

²¹ We engage in the supplemental analysis with this formulation of “harm” not as a signal of agreement with the formulation—it is not—but rather to show that even under this formulation, there is no statistically significant evidence of “harm,” and any possible “harm” that might exist under this formulation is significant less than the benefits of activism.

²² Our sample years include 2011-2021. We use the SharkRepellent dataset from FactSet to identify activist events. Our stock return data comes from CRSP. We use NYSE TAQ to compute signed trades and we assume that

believe that if the DERA Memo had included this analysis, and focused on abnormal net selling instead of assuming all trades were “harmed,” it would not have concluded that there was any net “harm”—under its own formulation of “harm”—during the relevant periods of time.

Specifically, we use NYSE Trade and Quote Data and compute whether any given trade is buyer- or seller-initiated.²³ We calculate net selling activity as seller-initiated volume minus buyer-initiated volume, scaled by total trading volume. This distinction is important for welfare analysis because if, for every seller-initiated trade, there is an equal and opposite sized buyer-initiated trade, then we cannot meaningfully infer that any alleged “harm” has occurred. However, if there is a **net order imbalance**, with more selling activity than buying activity, then we may be able to infer alleged “harm.”²⁴ Consistent with the academic literature, we compute abnormal net selling percent by adjusting for lagged net selling volume and the logarithm of market capitalization.²⁵

Figure 1 below depicts abnormal net selling during the 30 trading days surrounding the filing of a 13D. As Figure 1 clearly demonstrates, there is no statistically significant evidence of systematic net selling during the [-5,0] window (the period of focus in the DERA Memo’s analysis).

investors trade at the volume-weighted average price during market hours. We note that although we differ in our empirical design from DERA, we believe our assumptions are justifiable. For example, CRSP volume is known to be inaccurate for NYSE-listed stocks because the CRSP data source rounds volume to the nearest hundred. Our volume is based on the as-reported individual trades. We do not need to assume that all volume is seller-initiated because we can directly classify trades. DERA assumes that investors traded at the average of the closing price and the previous day’s price, but we are able to use the average prices that investors actually paid during trading hours.

²³ See Charles M. Lee & Mark J. Ready, Inferring Trade Direction from Intraday Data, 46 *Journal of Finance* 733 (1991) (classifying buyer-initiated trades as trades that cross the midpoint and execute at the offer price).

²⁴ Obviously, for every sell order there is always an equal and opposite buy order. However, the academic literature and we assess net buying and selling by excluding impacts on market makers, whose business model does not depend on directional trading, but rather on collecting the spread. This approach allows us to estimate the benefit or “harm” to natural buyers.

²⁵ Order imbalances are known to be persistent, and subject to market-wide effects. See Tarun Chordia & Avanidhar Subrahmanyam, Order Imbalance and Individual Stock Returns: Theory and Evidence, 72 *Journal of Financial Economics* 485 (2004). We follow the finance literature in making the necessary adjustments. See Elizabeth R. Odders-White & Mark J. Ready, The probability and magnitude of information events, 87 *Journal of Financial Economics* 227 (2008). We make one modification, which is to estimate the regression on a 60-day rolling basis because we are concerned about abnormal order imbalance in event-time, whereas Odders-White & Ready do so on a stock-year basis.

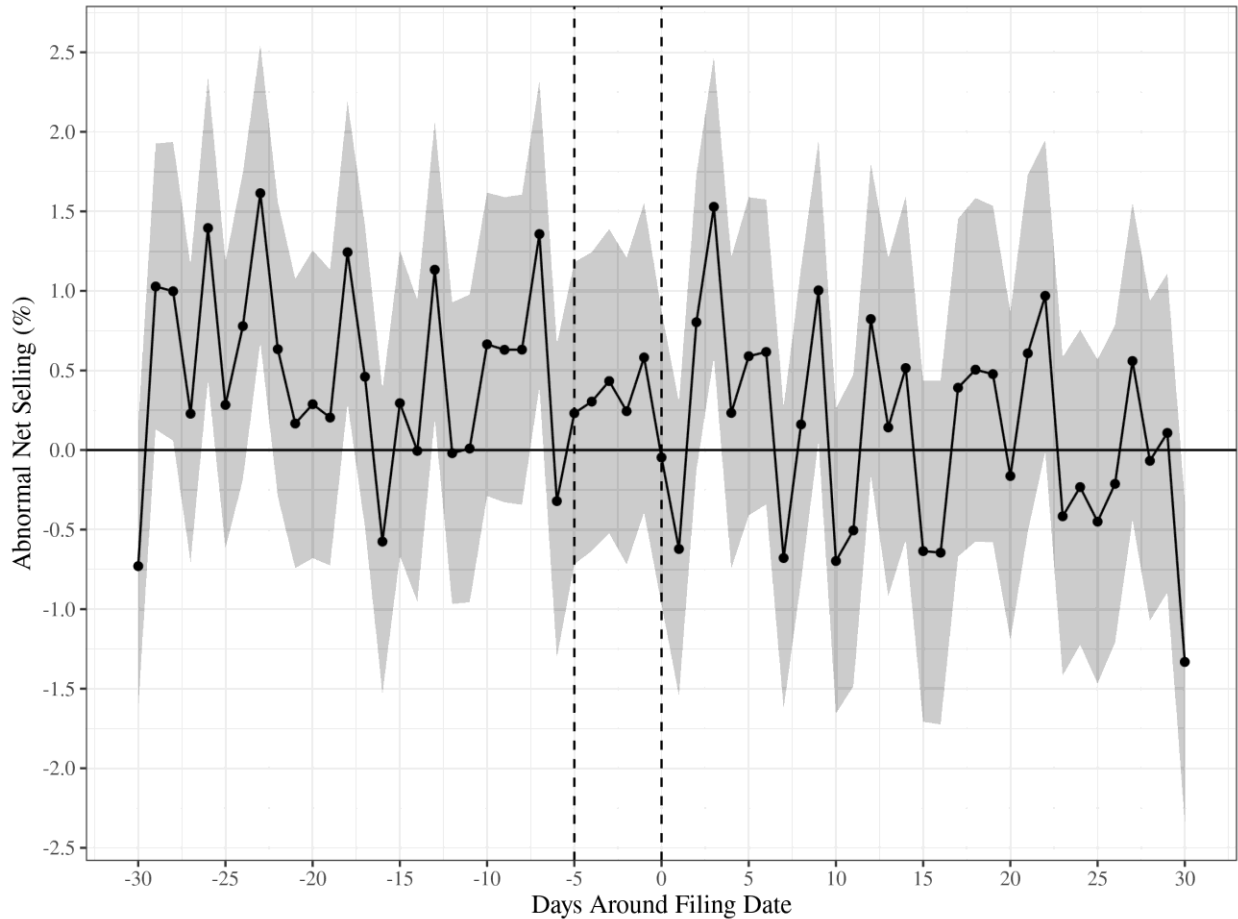


FIGURE 1. ABNORMAL NET SELLING AROUND 13D FILING

Although our point estimates in Figure 1 show some net selling during the [-5,0] window, a 95% confidence interval also includes zero and positive imbalance (net buying). Moreover, our point estimates are small: only about half of a percent of total volume is on average due to abnormal net selling.

Figure 1 also shows that there is **abnormal net buying after the filing of the 13D**. Such abnormal net buying makes intuitive sense, given the widely-known positive reaction to the announcements of activist interventions. This finding highlights why it is wrong to assume all volume is “harmed,” as the DERA Memo does.

Moreover, as noted above, the DERA Memo cites, but does not refute, our previously submitted study, based on publicly available data and straightforward econometrics, showing that **retail investors are not net sellers** during the 10-day Schedule 13D window.²⁶ The DERA Memo correctly recognizes evidence that abnormal volume can simply represent institutional selling pressure.²⁷ Accordingly, an appropriate analysis of selling during the relevant windows

²⁶ See Comment Letter from Robert E. Bishop and Frank Partnoy, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf>, at 11-13.

²⁷ See id. at 26.

does not provide support for narrowing the Section 13(d) window based on a claim that retail investors are “harmed” during the window.

In addition, the DERA Memo, we, and others have noted that the academic literature has established—repeatedly and in a reproducible manner—that there is substantial evidence of the benefits of shareholder activism, including significant abnormal positive returns associated with the announcement of activism. Indeed, the DERA Memo’s findings are consistent with such substantial benefits: the analysis depicts significant abnormal positive returns during the specified filing windows. A more complete and accurate analysis of “harm” should take into account these benefits.²⁸

Figure 2 shows the results of our “harm” analysis. We follow the same approach as the DERA Memo, but because we use signed trades, we can directly estimate both the “harm” when there is net selling and the benefit when there is net buying. Specifically, for each day in event time we construct a buy-and-hold position that is closed out on day $t+30$.²⁹ During the $[-5,0]$ day window we find minimal evidence of potential “harm,” but our estimates are statistically and economically insignificant. However, consistent with the academic literature and DERA’s own analysis showing positive cumulative abnormal returns, our buy-and-hold analysis shows that net investors benefit significantly during the relevant time period. Based on our analysis, this portion of the average benefit per campaign is approximately \$12M per campaign.³⁰

²⁸ In addition, the DERA Memo’s formulation of “harm” also ignores the direct and indirect benefits that selling shareholders who have any other market exposure receive because of the incidence of activism at other companies. See Comment Letter from 65 Law and Finance Professors, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123313-279608.pdf> (discussing market-wide benefits of activism); Comment Letter from 85 Law and Finance Professors, Mar. 21, 2022, <https://www.sec.gov/comments/s7-32-10/s73210-20120780-272960.pdf> (same).

²⁹ The DERA Memo uses the same approach, but assumes individuals sell during the window $[-5,+1]$, and then computes the return up until $t+1$. (This window could represent the opportunity cost of having made a bad trade, or the cost of a short position that is closed out on that day.) However, this approach ignores the potential benefits accrued after the filing of the 13D. Separately, tests using the $[-5,+1]$ window show no statistically significant benefit or “harm,” which is consistent with our analysis using the $[-5,+30]$ window.

³⁰ As noted above, this estimate is responsive to the approach in the DERA Memo, and does not include other benefits associated with shareholder activism.

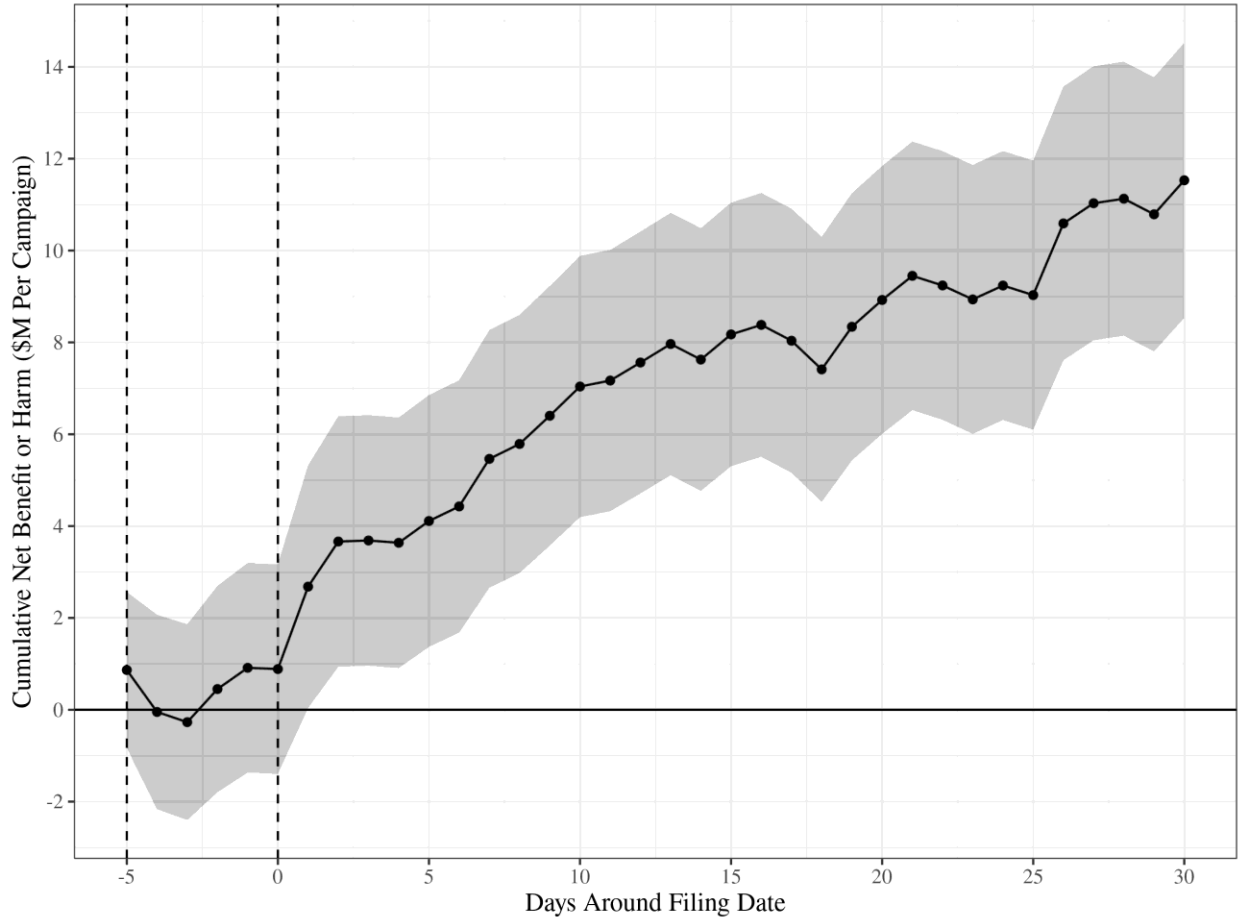


FIGURE 2. CUMULATIVE NET BENEFIT OR HARM

As Figure 2 shows, a more complete analysis of the relevant data supports a conclusion that a rule resulting in a decline in the incidence of shareholder activism would generate significant net harm, even including the “benefits” that would result from avoiding “harm” to some sellers. Moreover, long-term investors benefit significantly from activism. For example, over our sample period we estimate that the benefit in the median campaign for the aggregate shareholder base over a [-30,+30] window is \$298 million.³¹ This analysis and data based on DERA’s own formulation of investor “harm” suggest that a final rule narrowing the Section 13(d) window would harm investors overall. As noted above, we agree with the DERA Memo’s caveats and qualifications regarding its methodology and the limitations with respect to calculating “harm” based on its approach. Nevertheless, we would **accept a final rule shortening the Section 13(d) disclosure window to five business (or trading) days** as a reasonable middle-ground compromise position on the issue.

³¹ This calculation assumes that investors purchased 30 days prior to the filing of a 13D and sold 30 days following the 13D filing date. Of course, the direct and indirect benefits of activism to long-term shareholders are likely greater. See Comment Letter from 65 Law and Finance Professors, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123313-279608.pdf> (discussing market-wide benefits of activism); Comment Letter from 85 Law and Finance Professors, Mar. 21, 2022, <https://www.sec.gov/comments/s7-32-10/s73210-20120780-272960.pdf> (same).

Business (Or Trading) Days, Not Calendar Days

Third, we note briefly that any final rule narrowing the Section 13(d) window should be based on business (or trading) days, not calendar days. We believe there is now a broad consensus that the final rule should be framed in terms of business (or trading) days.³² Indeed, DERA conducted much of its economic analysis using business (or trading) days, consistent with other regulatory and trading practices.³³ We do not believe the DERA Memo provides support for narrowing the Section 13(d) window based on calendar days.

The DERA Memo appropriately references calendar days in describing the current calendar-day based disclosure regime, as in the median number of days between trigger date and filing date during 2021,³⁴ or in its assumptions about the behavior of market participants during the current ten calendar-day filing window.³⁵ However, the DERA Memo, also appropriately in our view, adjusts from calendar days to business (or trading) days in its analysis.

For example, Figure 3 of the DERA Memo depicts the percentage of non-corporate action filings from 2011-2021 for which filers completed share accumulation as of a given day by days after trigger date.³⁶ As the DERA Memo describes Figure 3, the calculations there involved an adjustment from calendar days to trading days in order to account for the possibility that day five after a trigger date fell on a weekend or holiday.³⁷ In other words, the DERA Memo correctly recognizes that the unit of analysis in examining trading should be trading days.

DERA appropriately used business (or trading) days. Any final rule should, too.

“Information Asymmetry”

Finally, as noted above, the DERA Memo includes numerous assertions regarding “informational asymmetry” that are not supported by any data.³⁸ We previously have criticized similar references in the Beneficial Ownership Proposal.³⁹

³² See, e.g., <https://www.youtube.com/watch?v=o8K5LEeGEME> (discussing business days).

³³ The DERA Memo notes that references to “days” mean calendar days, unless otherwise specified. See DERA Memo at 5 n.13. However, the memo then specifies several instances in which its data and analysis are based on business days. See *id.* at 15 (using business days to calculate percentage of filers completing share accumulation as of a given day); *id.* at 23 n.69 (noting that the “statistics in the table follow existing studies in using a measurement period based on a number of *business* days around the filing date”) (emphasis in original); *id.* at 25 (describing “trading days between the fifth day after the trigger date and the filing date”); *id.* at 26 (excluding filings because “they were filed on or before the first *business* day after the proposed filing deadline”).

³⁴ See DERA Memo at 2, Table 1.

³⁵ See *id.* at 5-6 (describing assumptions related to current calendar-day filing window).

³⁶ See *id.* at 15.

³⁷ See *id.*

³⁸ See, e.g., DERA Memo at 8, 21 & 27 (referencing “information asymmetry”).

³⁹ Specifically, as we previously have noted, any new rulemaking efforts focused on such concerns would be a substantial departure from past regulatory policy, and an abrupt policy pivot from the Commission’s own positions over time. See Comment Letter from Robert E. Bishop and Frank Partnoy, Apr. 11, 2022, <https://www.sec.gov/comments/s7-06-22/s70622-20123323-279616.pdf>.

For example, the DERA Memo asserts that “harms” to selling shareholders and associated “information asymmetry” may have broader implications for trust in markets, liquidity, and capital formation.⁴⁰ But as the DERA memo notes, academic literature in this area has not been able to identify any reductions in liquidity or changes in standard measures of “information asymmetry” during these periods.⁴¹ In fact, the literature has found that measures of adverse selection are generally *lower* on these days, perhaps because activist investors use limit orders, and hence add to market liquidity.

Therefore, we urge the Commission not to rely on any novel policy rationale based on assertions about “information asymmetry” without any evidence. New rules based on this rationale would be a substantial departure from past regulatory policy. Such an abrupt policy pivot would invite arguments and challenges regarding inconsistencies at the Commission. The likely result would be unhelpful and counterproductive.

Conclusion

Overall, the comments submitted in response to the Beneficial Proposal, including the data and analysis in the DERA Memo, provide at most limited support for narrowing the Section 13(d) window to five business (or trading) days (not calendar days). Indeed, certain aspects of the DERA Memo, along with the supplemental data and analysis we provide here, do not support narrowing the Section 13(d) window at all. Nevertheless, we continue to view a final rule shortening the Section 13(d) window to five business (or trading) days as a reasonable compromise. We do not believe there is economic analysis or data supporting the cash-settled derivatives or “group” definition portions of the Beneficial Ownership Proposal.

Finally, we continue to believe that, if the Commission adopts final rules of any kind with respect to the Beneficial Ownership Proposal, it would be helpful in the final release to include a description of current law, as was included in the Beneficial Ownership Proposal. We believe the description of the law regarding beneficial ownership in the Beneficial Ownership Proposal was an important and helpful contribution, and we thank the Staff for including it.

Respectfully,

/s/ Robert E. Bishop

Robert E. Bishop
Associate Professor
Duke Law School

/s/ Frank Partnoy

Frank Partnoy
Adrian A. Kragen Professor of Law
UC Berkeley School of Law
Berkeley Haas (Affiliated Faculty)

⁴⁰ See DERA Memo at 27.

⁴¹ See Pierre Collin-Dufresne & Vyacheslav Fos, Do Prices Reveal the Presence of Informed Trading?, 70 Journal of Finance 1555 (2015).