

March 7, 2011

Call for Modernization of the Section 13 Beneficial Ownership Reporting Rules

We today filed a [rulemaking petition](#) with the Securities and Exchange Commission with respect to the beneficial ownership reporting rules found in Section 13(d) of the Securities Exchange Act of 1934. Our request highlights the urgent need to amend the existing reporting framework to keep pace with market realities and abuses, in particular by closing the Schedule 13D ten-day window between crossing the 5% disclosure threshold and the initial filing deadline, and adopting a broadened definition of “beneficial ownership” to fully encompass alternative ownership mechanisms. Recent maneuvers by activist investors both in the U.S. and abroad have demonstrated the extent to which current reporting gaps may be exploited, to the detriment of issuers, other investors, and the market as a whole.

The current ten-day window both deprives the investment community of material information and creates an opportunity for investors to engage in “stealth” acquisitions of significant positions to the detriment of their counterparties and issuers, and contrary to the purposes of the Williams Act. Accordingly, we recommend that the SEC require that the initial Schedule 13D filing be made within one business day following the crossing of the 5% ownership threshold, using the “prompt” disclosure standard that the SEC requires with respect to material amendments to existing Schedule 13D filings. In addition, in order to give time for the market and investors to assess Schedule 13D disclosures, we recommend that the SEC adopt a “cooling-off period” between the acquisition of 5% beneficial ownership until two business days after the initial Schedule 13D filing is made during which acquirers would be prohibited from acquiring additional beneficial ownership.

Furthermore, the current definition of “beneficial ownership” under the Section 13 reporting rules is out of date and overly narrow, permitting activists to acquire significant influence and control while evading the 13D reporting requirements. To close this gap, and to keep pace with current market practices and disclosure regimes in other developed financial markets, we recommend that the SEC adopt a broad definition encompassing ownership of any derivative instrument which includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject security.

We believe that these actions are necessary to further the smooth functioning and transparency of the U.S. securities markets and restore investor confidence. We urge the SEC to take prompt action to modernize the Section 13 rules consistent with the new authority granted by the Dodd-Frank Act.

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