



August 29, 2018

The Honorable John Cornyn
U.S. Senate
517 Hart Senate Office Building
Washington, D.C. 20510

Subject: Support for S. 1744 (Brokaw Act)

Dear Senator Cornyn:

The undersigned investor relations professionals, who are members of the Board of Directors for the Houston Chapter of the National Investor Relations Institute (NIRI), are writing to encourage you to support S. 1744 (the “Brokaw Act”), a bipartisan bill introduced by Senator Tammy Baldwin (D-WI) and Senator David Perdue (R-GA). Our chapter members represent more than 55 public companies with an overall market cap of approximately \$760 billion.

S. 1744 would modernize the Securities and Exchange Commission’s Rule 13(d) disclosure rules and provide greater transparency for the benefit of public companies, employees, and investors. Under current 13(d) rules, an activist investor accumulating more than 5 percent of a company’s shares is required to publicly disclose such interest by filing a beneficial ownership report with the SEC on Schedule 13D. This report is to be filed within 10 days after the investor crosses the 5 percent threshold.

The SEC has not updated these disclosure requirements in more than 40 years, and S. 1744 would update the rules to close loopholes and make positions taken by activists more transparent to companies and other investors. As then-SEC Chair Mary Schapiro observed in 2011, many believe that the 10-day reporting deadline “[r]esults in secret accumulation of securities; [r]esults in material information being reported to the marketplace in an untimely fashion; and [a]llows 13D filers to trade ahead of market-moving information and maximize profit . . .”

The Brokaw Act is named for a small town in Wisconsin that went bankrupt after the closure of its paper mill by an activist hedge fund. The activist fund abused the outdated 13(d) rules to acquire a significant position in the Wausau Paper Company, force out its executives, and demand short-term profits at the expense of the company’s long-term future. The activists generated significant returns for themselves at the expense of the workers in Brokaw.

S. 1744 would make three important changes to the 13(d) disclosure rules. First, it would shorten the deadline for disclosing an ownership interest from 10 days to four days, which is the current deadline for public companies to file 8-K reports to disclose material developments. Second, the bill would require disclosure of any short or derivative positions that cross the 5 percent threshold, something that does not occur today. And finally, the bill would expand the 13(d) reporting requirement to include activists who are coordinating activities for the purpose of seeking control or influence over a public company.

The United States lags behind other major markets in providing for ownership transparency and protecting companies from ambush activism. The United Kingdom (two days), Australia (two days), Hong Kong (three days), and Germany (four days) all have adopted shorter reporting periods.

The Brokaw Act would not chill shareholder activism, as activist funds will continue to take positions in underperforming companies. This legislation would level the playing field between activists and the companies they target, while also ensuring that other investors have more timely information about activist campaigns and can make more informed decisions about whether to sell their shares or buy more shares.

S. 1744 is good policy for companies, investors, and employees, and has received public support from our parent organization, as well as the Society for Corporate Governance and the AFL-CIO. The bill was discussed during a June 28, 2018, hearing held by the Senate Committee on Banking, Housing, and Urban Affairs, and no one raised any objections to the need to update the 13(d) reporting deadlines.

On behalf of the Houston Chapter of NIRI, we hope that you will support this much-needed bipartisan legislation to modernize the 13(d) disclosure rules.

Sincerely,

K. Wancey Matthews *Stacy Stringer*
[Signature] *Annex Carole* *Aut Holden*
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