

3434 Washington Blvd.
4th Floor
Arlington, VA 22201
December 8, 2017

The Honorable Tammy Baldwin
709 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your letter regarding my nomination to serve on the Securities and Exchange Commission (SEC). Your letter raises many important issues. I share your desire to ensure that the capital markets support a robust, dynamic American economy. The SEC has a key role to play in making sure that the capital markets work to ensure that people all across the country are able to contribute their talents and resources to society and are appropriately compensated for doing so. The SEC also has an important role to play in ensuring that investors have access to material information as they make their investment decisions. Our capital markets serve the country well, but there is room to make them work even better for investors, companies, and the workers they employ. If I am confirmed, I look forward to working with you, others in Congress, and my fellow Commissioners to address areas in which the regulatory framework is falling short.

My answers to your specific questions follow. For convenience, your questions are included along with my responses. The footnotes accompanying your questions, however, have not been included.

Activist Hedge Funds and the Brokaw Act

- 1. I am concerned that the influence of aggressive short-term oriented shareholders, along with the rise of stock-based pay, have made corporate executives focus myopically on their share price at the expense of long-term growth and serving other stakeholders such as workers and taxpayers. Do you believe large blockholders contribute to this problem, and if so, how would you combat it?*

While I believe that market prices generally reflect the long-term value of companies, it is important to ensure that the capital markets work for investors and companies with a long-term focus. Large blockholders sometimes influence company decision-making. Their influence can be positive—encouraging companies to take steps that will increase their long-term value—or negative—inducing companies to focus on objectives that further the blockholder's interests, but undermine the company's value. If I am confirmed, I look forward to working to ensure that investors have the information they need to understand and assess companies' and shareholders' actions and the implications of those actions for

companies' long-term value. The SEC also can explore ways to modify market structure and capital formation rules to ensure that companies are able to raise capital in a way that is consistent with long-term value maximization.

2. *Do you believe activist hedge funds encourage public companies to cut their investments in favor of buying back their own stock?*

Hedge funds employ many different investment and shareholder engagement strategies, so generalizing across hedge funds is difficult. Activist hedge funds sometimes urge companies to engage in stock buybacks. In other instances, hedge funds urge companies to invest in research, development, or expansion. If I were to be confirmed, I would work to ensure that the capital markets facilitate economic growth and investments by companies to hire and train employees, expand their operations, and conduct research and development.

3. *Do you believe the definition of 'person or group' should be updated to capture groups of investors coordinating their actions to remain under the five percent threshold?*

How broadly "person" and "group" are defined affects how Section 13(d) of the Securities Exchange Act operates. Section 13(d) currently reaches groups that act "for the purpose of acquiring, holding, or disposing of securities of an issuer." I am aware that you and others have sought to expand this concept so that it is more inclusive. If I am confirmed, I look forward to working with you and your colleagues in Congress, my fellow Commissioners, and the SEC staff to understand, in light of relevant evidence, whether and, if so how, the scope, timing, and applicability of Section 13(d) disclosure requirements should be changed or clarified.

4. *What do you believe is the purpose of the 10-day 13(d) disclosure window?*

Although I have not studied the legislative history of the Williams Act, the 10-day disclosure window in section 13(d) likely was intended in part to afford purchasers sufficient time to make the necessary filing with the SEC and to provide sufficient economic incentives for shareholders to engage in managerial oversight and discipline. As you note in your letter, the SEC has the authority to shorten this window. If I am confirmed, I look forward to considering relevant evidence to understand whether this filing window appropriately balances these objectives with Section 13(d)'s transparency objective. Any such examination should take into account the fact that many aspects of the securities markets have changed in the four decades since Section 13(d) was put in place.

5. *Do you believe the current 13(d) disclosure rules adequately provide issuers, investors, and the marketplace with sufficient information about large shareholders?*

I am aware that you and others have called for a reassessment of the Section 13(d) disclosure rules. An evidence-based reassessment would be valuable because it could take into account

the years of experience with the disclosure rules to date and the many changes that have occurred in our markets in the years since these rules were put in place. If confirmed, I look forward to working with you and your colleagues in Congress, my fellow Commissioners, and the SEC staff to assess whether, in light of the substantial changes in the nature of markets, shareholders, and the state corporate governance framework since these rules were adopted, the rules are achieving their objectives or whether any changes are necessary.

6. *If investors are found to be intentionally skirting the 13(d) disclosure rules (for example, by forming a 'wolf pack' or using a derivative to avoid filing a 13D) do you support updating the SEC's rules to restore the spirit of the law?*

One of the difficult aspects of rule-writing is predicting how those rules will work in practice and how market participants will change their behavior in response to the rules. Sometimes, for example, market participants find loopholes that enable them to avoid complying with a particular rule or otherwise comply with the letter of a rule, but not its spirit. Once a rule has been in place for some time, therefore, it is useful for policymakers to look back and assess how the rule is working and how market participants are responding to the rule. As part of any reconsideration of the Section 13(d) framework, therefore, it would be important to look at whether purchasers are avoiding the application of existing requirements in a manner that runs counter to the objectives of Section 13(d).

Stock Buybacks

1. *The SEC's mission is to facilitate capital formation. However, in recent decades, through stock repurchases and mergers, public corporations actually send money to the stock market, rather than vice versa. Over the last decade, net equity issuances (stock issuances minus buybacks) averaged negative \$412 billion per year (money flowing out of companies to shareholders). Are you at all concerned about the rate of buybacks and, what, if anything, do you believe the SEC should do to reverse the extraction phenomenon in our public markets?*

I share your desire for vibrant capital formation to support a healthy, growing American economy. Facilitating capital formation is a key part of the SEC's mission and one that would be an important focus of my tenure at the SEC if I were to be confirmed. As with other market trends, it is important for the SEC to monitor stock buybacks and stock issuances. Manipulative buyouts, of course, should not occur at all. Buybacks, if properly and legally used, however, can contribute to economic growth. For example, a company without productive uses for capital might conclude that it should return capital to shareholders through a stock buyback. The shareholders can then invest that money in public or private companies with productive uses for it. Other companies might contribute to corporate growth by choosing to refrain from buybacks in order to invest in new projects. The SEC should work to ensure that the regulatory framework facilitates the flow of capital to its highest and best use. If I am confirmed, I look forward to working with you and your staff to understand

why buyouts are occurring, how they are affecting the economy, and what the SEC can do to better facilitate capital formation.

2. *Stock buybacks have famously increased in frequency since the 1982 10b-18 rule that provides safe harbor from insider trading charges to executives buying back their company's stock. Do you believe that 10b-18 should be reconsidered in light of the explosion of stock buybacks?*

Retrospective review is an important tool for a regulatory agency. As with other rules, the SEC should periodically look at how well Rule 10b-18 is achieving its objectives and whether it is giving rise to unintended consequences. As you note, many companies have engaged in stock buybacks in recent years, which makes a review of Rule 10b-18 timely. If I am confirmed, I look forward to working with my fellow Commissioners and the SEC staff to look at the evidence about how and why buybacks are occurring and assess whether, in light of this evidence, changes to the regulatory framework are needed.

3. *Buybacks have been observed to coincide with declines in R&D spending, and possible investment overall. Are you concerned that the amount of corporate capital flowing to stock buybacks could undermine American global competitiveness?*

I share your concern about America's global competitiveness and the belief that American global competitiveness is closely linked with whether capital is applied to its most productive use. When a company can use its capital most productively, it should retain that capital rather than conducting buyouts or paying dividends. At other times, however, buybacks can be an appropriate way of moving capital to more productive uses outside of the company conducting the buyback. Whether a particular buyback benefits the economy is a fact-specific question, but it is useful to monitor trends about how and why buybacks are occurring. If I am confirmed, I look forward to working with you, your colleagues in Congress, my fellow Commissioners, and the SEC staff to look for ways to better facilitate capital formation to support companies' ability to grow and innovate so that they can compete effectively in our global economy.

4. *What impact has increased stock buybacks had on wages and jobs?*

I share your desire to see companies investing in American workers. I have not seen empirical studies that explore whether there is a causal link between buybacks and economy- or industry-wide changes in wages and jobs, but am aware that some companies have engaged in buyouts around the same time they have announced job cuts.

To the extent that a company is repurchasing its shares to return cash that it cannot productively use, buybacks can drive funds to companies that are eager to hire workers and able to pay them well. Unfortunately, barriers to capital access sometimes impede the smooth transition of capital to companies that can use it and of workers to companies that want to hire them. One important way the SEC can help to protect American workers is to ensure that

companies of all sizes can raise money in our capital markets, which they then can use to hire workers, expand production, and invest in research and development. In a healthy, growing economy, share buybacks may occur less frequently, and when they do, any associated layoffs will take less of a human toll as new and expanding companies will stand ready to hire laid-off workers. If I am confirmed, I look forward to working to ensure that our capital markets work effectively to support an economy that expands opportunities, and hence raises prosperity for all Americans.

5. *Do you support requiring public companies to disclose their repurchases and issuances more frequently, and include more granular data about the transactions?*

It is important for the SEC to assess periodically how well its disclosure requirements are working and whether changes are needed to ensure that investors are getting material information in a timely manner. If confirmed, I look forward to consulting with you and your colleagues in Congress, my fellow Commissioners, and SEC staff regarding whether the current disclosure about stock buybacks and issuances is adequately meeting investors' needs or whether more frequent or more detailed disclosure would be appropriate.

Executive Pay Rules

1. *As a Commissioner, will you commit to supporting proposing and finalizing the mandatory Dodd-Frank rules required by Sections 956 and 954?*

I support the completion of rulemakings required by Congress, including the rules required by Dodd-Frank that have not yet been completed. If I am confirmed to be a Commissioner, I will not be able to set the agenda, but will work with Chairman Clayton and my fellow Commissioners to appropriately balance and carry out the SEC's many rulemaking, compliance, and enforcement responsibilities, including implementing unfinished Dodd-Frank rulemaking mandates.

2. *Do you believe that stock-based pay has distorted priorities for public company executives?*

Many factors affect corporate priority-setting. The manner in which executives are paid is one such factor. Indeed, one of the reasons many companies use stock-based pay is to align executives' incentives with those of shareholders and encourage them to set priorities in a way that contributes to the company's long-term value. If I am confirmed, I look forward to working with my fellow Commissioners and the SEC staff to ensure that public company disclosures contain the material information that investors need as they assess how companies set and execute their priorities.

3. *Do you believe stock-based pay has encouraged executives to buy back their company's stock?*

I have not seen studies that explore empirically whether there is a causal link between stock-based pay and buy-back decisions. The reasons for stock buybacks are company- and fact-specific. Incentives created by stock-based pay could help to induce executives of a company without productive uses for capital to determine that a buyout would be value-enhancing. In other circumstances, stock-based pay would induce executives to retain capital for investment in research and development or expansion when such investments are expected to enhance the company's long-term value. As you highlighted in your letter, it is important to ensure that companies are providing adequate, timely disclosure related to stock buybacks. I look forward to working with you and your staff on this issue.

4. Do you support the pay ratio disclosure rule and will you commit to finalizing and enforcing the mandatory rule as a Commissioner?

I support SEC efforts to implement and enforce statutory mandates, including the pay ratio disclosure mandate. If I am confirmed to be a Commissioner, I will not be able to set the agenda, but will work with Chairman Clayton and my fellow Commissioners to appropriately prioritize the SEC's many rulemaking, compliance, and enforcement responsibilities, including those related to the pay ratio rule. As with other rules, in deciding how to implement and enforce the rule, it is incumbent upon the SEC to take into account timing, operational, and technical considerations. I am supportive of efforts, such as the SEC's recently issued guidance, to assist companies as they seek to understand and comply with the rule. As the SEC works with companies on implementation and reviews disclosures for compliance with the rule, it may need to make adjustments to the rule or provide additional guidance.

5. Do you believe reducing the ratio of CEO to median worker pay is a worthy goal?

Companies should pay people for the contributions they make to the corporation. Decisions about relative and absolute pay of CEOs and other workers are important, but they are best made by the companies and employees who are able to conduct a fact-specific assessment of the contributions an employee is making to the enterprise. In making individual salary and wage decisions, companies typically take into account a wide range of factors, including the nature of the job responsibilities, the qualifications and experience of the employee, and the local labor market.

For its part, the SEC has an important role in ensuring that investors have material information about the company's compensation decisions. The SEC also has a role to play in facilitating capital formation so that many companies are competing for talented workers at all levels of the enterprise. I look forward to working with you and your colleagues in Congress, my fellow Commissioners, and the SEC staff to ensure that disclosure requirements, including compensation disclosure rules, are properly calibrated and do not harmfully distort compensation and hiring decisions and that capital formation rules are effective.

6. *Do you believe that 'actual realized gains' is a more accurate representation of an executive's pay than 'estimated fair value'?*

As your letter suggests, designing the pay ratio rule involved complex questions about how to measure and define chief executive officer compensation and median employee compensation. If I am confirmed, I expect to work with my fellow Commissioners and the SEC staff to consider ways in which the pay ratio disclosure rule and its implementation can be improved. Among the issues to be considered is your suggestion that the SEC build into the rule an "actual realized gains" rather than an "estimated fair value" calculation for CEO compensation. The SEC also should consider the other suggestions it received in response to its request for comment earlier this year.

If I am confirmed, I look forward to working with you and your staff on the issues raised in this letter.

Sincerely,

A handwritten signature in blue ink that reads "Hester Peirce". The signature is fluid and cursive, with the first name "Hester" and last name "Peirce" clearly distinguishable.

Hester Peirce