

# United States Senate

WASHINGTON, DC 20510

June 17, 2008

Christopher Cox  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Cox:

I write today to express concern about the impact of *CSX Corp. v The Children's Investment Fund Management et al.*, decided by the United States District Court on June 11, 2008. The uncertainty created by this ruling will likely have a detrimental effect on the financial markets. Additionally, the inability for the court to fashion meaningful recourse for CSX will have consequences for future transactions involving equity swaps. I believe it is essential that the SEC provide clarification for the treatment of equity swaps under Section 13(d) in light of the court's recent findings that the use of equity swaps by The Children's Fund and 3G Capital Partners conferred beneficial ownership to these two entities and that they were subject to the resulting disclosure requirements.

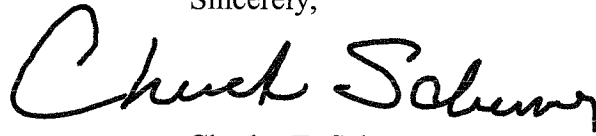
In this case, the court suggested analyzing beneficial ownership based on the intent of the swaps buyers, and the likelihood of their ability to influence the voting decisions of their counterparties. While noble in its goals, this subjective framework would be difficult to administer evenhandedly and has the potential to lead to a rash of litigation that will drive up costs and ultimately reduce the competitiveness of the U.S. financial sector. The financial community needs clear rules for the treatment of equity swaps, so that parties to swaps agreements do not bear the risk of excessive litigation, and the investment community enjoys the benefits of the appropriate disclosures required by Section 13(d).

Additionally, I find it deeply disturbing that despite his clear finding that The Children's Investment Fund and 3G were in violation of Section 13(d), Judge Kaplan was unable to provide any meaningful equitable relief to CSX in this case. If there is no serious penalty for violations of Section 13(d), why should any investor adhere to its requirements? I am considering introducing legislation to correct this gap in the law, and would be very interested in discussing potential remedies, including the implications of granting CSX's request for voting rights sterilization and increased civil penalties, with the SEC.

I look forward to hearing from you regarding your plans for clarifying the definition of beneficial ownership and to a discussion of potential remedies under Section

13(d). If you should have any questions regarding this letter, please contact David Stoopler on my staff at 202-224-6542.

Sincerely,

A handwritten signature in black ink that reads "Chuck Schumer". The signature is written in a cursive, flowing style.

Charles E. Schumer  
United States Senator