



June 29, 2026

Ms. Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street SW  
Washington, DC 20436

Re: Docket Number MISC-051 – Comments of the U.S. Chamber Institute for Legal Reform on Proposed Amendment to 19 C.F.R. Part 210

Dear Ms. Barton:

The U.S. Chamber of Commerce Institute for Legal Reform (“ILR”)<sup>1</sup> respectfully submits these comments regarding the International Trade Commission’s (“Commission” or “ITC”) Proposed Financial Interest Disclosure Rule, which, among other requirements, would require all nongovernmental parties in section 337 investigations to disclose entities with an ownership or financial interest, including third party litigation funders. The Commission’s proposal reflects an emerging consensus that funding transparency promotes confidence in adjudicative proceedings. The Commission’s stated purposes for the proposed new rule include identifying potential conflicts of interest for Commissioners and ITC personnel, clarifying the identities of the real parties in interest and facilitating settlements through increased transparency. For the reasons explained below, ILR wishes (a) to express its general support for requiring transparency about third party litigation funding (“TPLF”) arrangements in ITC proceedings and related litigation and (b) to urge that revisions be made to the proposed Amendment to better effectuate its stated purposes.

### Introduction

TPLF is a rapidly growing business model in which non-parties invest in litigation by directly or indirectly supplying money to a plaintiff or his/her counsel in exchange for an interest in proceeds from the lawsuit. The vast majority of TPLF activity in U.S. adjudicatory forums occurs in secrecy because there is no generally applicable federal statute or rule requiring disclosure.<sup>2</sup> Moreover, to the extent parties seek this information through formal discovery or informal requests, funded parties (and their funders) usually resist strenuously, and tribunals often do not compel production of the requested information. Thus, the existence of TPLF in a

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<sup>1</sup> ILR is a program of the U.S. Chamber of Commerce dedicated to championing a fair legal system that promotes economic growth and opportunity. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors and regions, as well as state and local chambers and industry associations, and it is dedicated to promoting, protecting and defending America’s free enterprise system.

<sup>2</sup> See James Anderson, *Is Increased Transparency into Litigation Financing on the Horizon?*, National Law Review (Jan. 15, 2020), <https://www.natlawreview.com/article/increased-transparency-litigation-financing-horizon>.

particular action often becomes known only because of a local court rule or standing order requiring disclosure or the emergence of a public dispute between the funded party and the funder.

Despite this secrecy, it is clear that the amount of litigation being funded by non-party investors has grown by leaps and bounds over the last decade. According to one industry report, during 2024 litigation funders had \$16.1 billion in assets under management in the U.S.<sup>3</sup>

Third party litigation funders have a natural interest in bankrolling proceedings implicating the ITC. The majority of section 337 investigations involve allegations of patent infringement, copyright infringement, and trade secret misappropriation—claims that, while primarily seeking exclusion orders and other injunctive relief, frequently give rise to monetary recoveries as parties negotiate settlements to resolve the underlying disputes, including those in parallel court proceedings. This settlement dynamic provides a rationale for funders to support complainants in ITC proceedings with the expectation of a return on their investment.

Moreover, ITC investigations are frequently accompanied by parallel actions in federal district court related to the same intellectual property claims.<sup>4</sup> ITC complainants often file in both forums simultaneously, seeking exclusion orders at the ITC and monetary damages related to patent infringement in court. Current federal law allows a defendant to stay a district court lawsuit pending conclusion of an ITC investigation. Respondents in a section 337 investigation may also challenge the validity of an asserted patent by filing a petition for proceedings with the U.S. Patent Trial and Appeal Board (“PTAB”). ITC proceedings typically resolve more quickly than district court litigation and disputes before the PTAB. For these reasons, the threat of an exclusion order can create significant settlement pressure and impact on litigation, increasing the perceived need for TPLF and expanding the potential sources of compensation available to funders.

ILR supports disclosure requirements that would make TPLF arrangements more transparent. The proposed disclosure requirement is a logical extension of the Commission's longstanding practice of requiring parties to identify entities with material financial interests in Commission proceedings. Disclosure of significant funding interests follows the same transparency principles already reflected in corporate disclosure requirements. Absent the divulgence of this information, TPLF will continue to operate sub rosa, hiding potential conflicts of interest and other ethical issues, such as improper fee-splitting between lawyers and non-lawyers. Further, unless TPLF becomes more transparent, tribunals will continue to be left in the dark about whether an outside entity is steering a plaintiff's litigation and settlement decisions—a dynamic that is highly relevant to settlement negotiations and cost-shifting obligations. And absent a disclosure rule, there remains a real risk that foreign competitors (indeed, potential adversaries) may engage in clandestine efforts to use U.S. courts and the ITC to undermine U.S.

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<sup>3</sup> The Westfleet Insider, *2024 Litigation Finance Market Report*, <https://www.westfleetadvisors.com/wp-content/uploads/2025/03/WestfleetInsider-2024-Litigation-Finance-Report.pdf>.

<sup>4</sup> Analyses have shown that as many as 80% of ITC proceedings are accompanied by parallel litigation. Bill Watson, *The ITC in 2019: Duplicative Litigation* (Mar. 27, 2020), <https://www.rstreet.org/commentary/2020-3-27-the-itc-in-2019-duplicative-litigation/>.

national or economic security. Because Section 337 investigations often involve significant economic interests, exclusion orders, and technologies affecting critical industries, public confidence in the integrity of Commission proceedings is enhanced when material financial interests are disclosed. Without the proposed transparency, the Commission cannot fully and faithfully examine and uphold the public interest in its proceedings or remedies.

However, to be effective, any such rule should not provide a blanket exemption for “personal loans” or “bank loans” because, as detailed below, such an unqualified exemption would shield considerable TPLF activity from disclosure. In addition, to effectuate the stated purpose, the Amendment should require the production of any underlying TPLF agreements. Experience has demonstrated that summary descriptions of funding arrangements often prove insufficient to identify governance rights, veto rights, waterfall provisions, repayment structures, or other provisions that may materially affect litigation conduct. Production of the agreement allows the Commission to evaluate the actual rights created by the arrangement rather than relying on party characterizations.

### **1) The Commission Should Amend 19 C.F.R. Part 210 To Require TPLF Disclosure**

As discussed below, we believe that a disclosure rule like the one proposed (with the proposed revisions we suggest in Section 2) would yield significant benefits to the parties, the public, the Commission, its Administrative Law Judges (“ALJs”), and its staff by promoting transparency, facilitating informed litigation and settlement decisions, and safeguarding the integrity of Commission proceedings, including the mandate to serve the public interest. These benefits are particularly pronounced in the context of section 337 investigations, which often proceed in parallel with intellectual property litigation—where TPLF is increasingly prevalent—and in which national economic interests are directly at stake. We further believe that the proposed Amendment would not impose an undue burden on parties as it does nothing more than require disclosure.

#### **a. Enabling Assessment Of Who May Exercise Control Or Influence Over Litigation**

A disclosure requirement would provide the ITC and parties with information about whether TPLF companies are exercising control or influence over litigation. TPLF contracts can give non-parties either explicit or implicit control over litigation decisions and a portion of any settlement or other payout, essentially making the funder a party in interest. The Commission, its ALJs, its staff, and all parties to a proceeding, are entitled to know the identity of these players. Notably, a report by the American Bar Association’s House of Delegates repeatedly emphasizes the inherent risk of funder control, warning against such control over the litigation itself and associated expenses.<sup>5</sup> Indeed, the few TPLF agreements that have come to light demonstrate that,

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<sup>5</sup> See ABA, *Best Practices for Third-Party Litigation Funding*, at 11, 12, 13, 15 (Aug. 2020), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/111a-annual-2020.pdf>.

unsurprisingly, TPLF entities actually can and do exercise various forms of control and influence over the litigation matters in which they invest.<sup>6</sup>

For example, in *Boling v. Prospect Funding Holdings, LLC*, the U.S. Court of Appeals for the Sixth Circuit concluded that the terms of the funding agreements involved in a personal injury lawsuit “effectively g[a]ve [the TPLF entity] substantial control over the litigation.”<sup>7</sup> In particular, two of the agreements permitted the funder to require the plaintiff to execute documents or pay filing fees to protect the funder’s interest. Another funding agreement provided that “[i]f the Proceeds [from settlement] are insufficient to pay the Prospect Ownership Amount in full, [Prospect] shall receive all of the Proceeds.”<sup>8</sup> Such a provision undoubtedly influenced the plaintiff’s ability to settle his case as he was required to accommodate the funder’s flat fee, which accrued with interest.<sup>9</sup> And in that same matter, “[a]ll four Agreements limited [the plaintiff’s] right to change attorneys without [the funder’s] consent, otherwise [the plaintiff] would be required to repay [the funder] immediately.”<sup>10</sup>

More recent cases continue to reinforce this trend. Most notably, Sysco Corporation filed a series of antitrust class actions against various poultry and meat suppliers, financing the litigation with more than \$140 million provided by Burford Capital (“Burford”).<sup>11</sup> When Sysco agreed to give its customers a piece of the antitrust claims in 2022, however, Burford allegedly objected and required that the funding agreement be changed to give Burford the right to review and reject settlement offers, provided Burford’s consent is not “unreasonably withheld.”<sup>12</sup> Once Sysco began receiving settlement offers it found to be reasonable, Burford allegedly sought to obstruct further settlement negotiations, fearing the amounts were too low.<sup>13</sup> Burford instituted proceedings to enjoin Sysco from finalizing settlements, and an arbitral panel granted an ex parte temporary restraining order in Burford’s favor.<sup>14</sup>

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<sup>6</sup> Indeed, a recent review of TPLF contracts that have come to light suggests that TPLF contracts often give funders significant control or influence over strategic and settlement decisions. *See* Lawyers for Civil Justice, Rules Suggestion to the Advisory Committee on Civil Rules, *An Examination of TPLF Contracts Reveals Common Control Mechanisms that Can Affect the Litigation Process and Influence Substantive Outcomes* (Sep. 3, 2025), <https://www.lfcj.com/document-directory/lcj-rules-suggestion-uniform-disclosure-of-tplf-contracts-is-necessary-to-inform-judges-and-parties-case-management-decisions> (the “LCJ Rules Suggestion”).

<sup>7</sup> *Boling v. Prospect Funding Holdings, LLC*, 771 F. App’x 562, 579 (6th Cir. 2019).

<sup>8</sup> Purchase Agreement (“*Boling* Purchase Agreement”) § 6.1, *Boling v. Prospect Funding Holdings, LLC*, No. 1:14-CV-00081-GNS-HBB, ECF No. 1-3 (Ex. C to Compl.) (W.D. Ky. filed June 19, 2014); *see generally* *Boling v. Prospect Funding Holdings, LLC*, No. 1:14-CV-00081-GNS-HBB, 2017 U.S. Dist. LEXIS 48098 (W.D. Ky. Mar. 30, 2017), *aff’d*, 771 F. App’x 562 (6th Cir. 2019).

<sup>9</sup> *Boling* Purchase Agreement at 1.

<sup>10</sup> *Boling*, 771 F. App’x at 580.

<sup>11</sup> *In re Pork Antitrust Litig.*, MDL No. 3031, 2024 U.S. Dist. LEXIS 97801, at \*5 (D. Minn. June 3, 2024).

<sup>12</sup> *See* Amended Petition to Vacate Arbitration Award ¶ 40, *Sysco Corp. v. Glaz LLC*, No. 1:23-cv-01451 (N.D. Ill. filed Mar. 20, 2023), ECF No. 18.

<sup>13</sup> *See id.* ¶¶ 30-40.

<sup>14</sup> *See id.* ¶¶ 41-58.

These allegations, if true, directly contradict Burford's repeated public statements that it does *not* exercise any control or influence over the lawsuits it finances.<sup>15</sup>

Burford and Sysco eventually settled their dispute. Although most of the details of the settlement remain confidential, in the one aspect that was publicly disclosed Sysco agreed to assign its claims to an affiliate of Burford. The fact that Sysco had to assign its claims to a Burford affiliate just to get out of a series of lawsuits Burford insisted on litigating raises serious questions about the extent of Burford's control and influence over the actions. Indeed, the defendants in the underlying litigation mounted legal challenges to the substitution of the Burford affiliate as a plaintiff. U.S. District Judge John Tunheim (D. Minn.) affirmed a magistrate judge's denial of the requested substitution, reasoning that it "threaten[ed] the public policy favoring the settlements of lawsuits."<sup>16</sup> As the court put it, "Sysco and Burford's conduct is precisely the kind of conduct of which courts are wary."<sup>17</sup>

Another litigation funder, Fortress Investment Group, has invested heavily in intellectual property litigation and is known for aggressively pursuing alleged infringers in court.<sup>18</sup> In a 2024 interview, Jack Neumark, a Fortress managing partner and co-CIO, made clear that Fortress maintains control and influence over the litigation that it funds, stating: "We're a tough counterparty if you don't do what you say you're gonna do . . . We see where funds go. If you do something you're not supposed to do, we're gonna be upset."<sup>19</sup> Similarly, Kacey Wolmer, the Chief Operating Officer of litigation funder Contingency Capital and a member of the Board of Directors of the International Legal Finance Association, recently testified before the New Jersey

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<sup>15</sup> See, e.g., <https://www.burfordcapital.com/how-we-work/with-law-firms/> ("We act as passive investors *and do not control strategy or settlement decision-making*, and our capital is almost always provided as a non-recourse investment, shifting risk from the firm to Burford.") (emphasis added); <https://www.burfordcapital.com/insights/insights-container/byline-legal-finance-post-covid/> ("If the matter wins, they can expect a meaningful share of the remaining damages, and if it loses, they keep any capital advanced, locking in a minimum outcome. In both scenarios, *the company maintains control of its litigation*—and considerably more control over its finances.") (emphasis added); <https://www.burfordcapital.com/insights/legal-finance-101/> ("Reported use of legal finance—also called litigation finance or litigation funding—has doubled in recent years, as companies and law firms increasingly recognize the benefits of gaining better control over legal budgets and risk *without ceding control of litigation decision-making or settlement.*") (emphasis added); <https://www.burfordcapital.com/insights/insights-container/how-do-law-firms-use-portfolio-finance/> ("[T]he use of legal finance generally does not alter control of decision-making or attorney-client relationships. Burford makes a portfolio deal directly with the firm, but Burford's role is that of a passive investor. Therefore, *Burford does not control the litigation or settlement strategy and decision-making*, except when agreed to by our client.") (emphasis added); <https://www.sec.gov/Archives/edgar/data/1714174/000110465920081137/filename1.htm> ("Unlike in our legal finance business, where we are *financing a client who retains decision-making authority in the litigation . . .*") (emphasis added).

<sup>16</sup> *In re Pork Antitrust Litig.*, 2024 U.S. Dist. LEXIS 97801, at \*13.

<sup>17</sup> *Id.* at \*14.

<sup>18</sup> Emily R. Siegel, *Fortress' Billions Quietly Power America's Biggest Legal Fights*, Bloomberg Law (Oct. 16, 2024), <https://news.bloomberglaw.com/business-and-practice/fortress-billions-quietly-power-americas-biggest-legal-fights>.

<sup>19</sup> *Id.*

Assembly Oversight Committee that “[t]here’s lots of instances where financial backers do have control . . .”<sup>20</sup>

In other cases, funders have actively participated in manufacturing lawsuits from whole cloth. In litigation between one lawyer and his former employer, the lawyer produced a slide deck outlining his mass arbitration strategy that was presented to a funder.<sup>21</sup> The deck set forth an apparent intention to “weaponize[]” an arbitration agreement between a business and its customers “by aggregating thousands of claims through targeted advertising campaigns.”<sup>22</sup> The deck explained: “Aggregating claims makes [the] entrance fee to just defend prohibitively expensive and the vast majority of such fees are non-refundable.”<sup>23</sup> The strategy: “offer a settlement slightly less” than the non-refundable fees to commence arbitrations to “induce a quick resolution.”<sup>24</sup>

The presentation described the “acquisition cost” to collect claimants, estimating a “spend of \$3.75 million to recruit 75,000 clients at \$50 an acquisition.”<sup>25</sup> It further explained how claimants’ counsel would identify “ripe targets” for a mass arbitration.<sup>26</sup> Claimants’ counsel would search for companies that “have a valuation of ~\$10 billion—high enough so they aren’t judgment proof and can settle for hundreds of millions of dollars, but low enough that \$200 million+ in arbitration fees creates an existential crisis forcing a quick settlement.”<sup>27</sup> The deck further noted that “a likely IPO or potential acquisition” may “make carrying litigation risk unpalatable” and thus make a business even more “ripe” to target.<sup>28</sup> To minimize costs to the claimants’ attorneys, and hence to the funder, the deck proposed monitoring court dockets to flag and “copycat existing legal theories.”<sup>29</sup> Assuming a quick settlement, the presentation estimated “1874% ROI on \$6.5 million investment” for the funder.<sup>30</sup> Notably, nowhere mentioned in the presentation is any analysis of the merits of claims or the benefit to consumer claimants.

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<sup>20</sup> See *Assembly Oversight, Reform and Federal Relations* (June 15, 2026), <https://www.njleg.state.nj.us/archived-media/2026/AOF-meeting-list/media-player?committee=AOF&agendaDate=2026-06-15-14:00:00&agendaType=M&av=A>, at 1:29:50.

<sup>21</sup> Affidavit of William Bucher ¶ 14, *Zaiger LLC v. Bucher Law PLLC*, No. 154124/2023, ECF No. 29 (N.Y. Cnty. Sup. Ct. May 9, 2023).

<sup>22</sup> *Id.*, Ex. A, at slide 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at slide 4.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at slide 7.

<sup>30</sup> *Id.* at slides 5, 9.

In short, the limited number of TPLF arrangements that have become public confirm that litigation investors do in fact exercise control or influence over the matters they finance. A disclosure requirement that includes the funding agreement would ensure that all parties and the Commission have visibility into the persons or entities calling the shots.

b. Providing The Court And Parties With Information Highly Relevant To Settlement Efforts

A disclosure requirement would facilitate fair and efficient settlements by ensuring that all persons or entities that have a direct financial interest in a matter and can exert influence or control over it are known and are appropriately factored into any resolution efforts. Indeed, knowing who has control over decisions regarding settlement is critical to making sure that the right people are involved in any negotiations or mediations. A party that must pay a TPLF entity a portion of the proceeds of any recovery may be inclined to reject what might otherwise be a fair settlement offer because of contractual commitments. Indeed, as an executive of a prominent TPLF company has acknowledged, litigation funding “make[s] *it harder and more expensive to settle cases.*”<sup>31</sup> This is so in part because the party may demand extra money to make up at least some of the likely substantial amount that will have to be paid to the TPLF entity, and a third party-funder may, in fact, insist that the party do so.

Notably, in the *Sysco* case, the plaintiff attempted to resist this pressure but ultimately chose to assign its claims to a Burford affiliate when the investor insisted that the litigation *not* be resolved outside court. While this represents one of the most egregious examples of a litigation investor attempting to exercise veto power over settlement decisions, investors can also undermine settlement efforts by structuring their agreements to maximize their take of the first dollars of any recovery, thereby deterring reasonable settlements.

This occurred in *Chevron Ecuador*, a racketeering suit filed by Chevron Corporation against Steven Donziger, who had fraudulently helped secure an \$18.2 billion judgment in a different lawsuit filed against Chevron in Ecuador on behalf of Ecuadorians allegedly harmed by the company’s drilling practices. Discovery revealed that Burford had provided the funding for the underlying suit against Chevron. The funding agreement between Donziger and Burford included a “waterfall” repayment provision, which provided for a heightened percentage of recovery on the first dollars of any award.<sup>32</sup> Under the agreement, Burford would receive approximately 5.5% of any award, or about \$55 million, on any amount starting at \$1 billion. However, if the plaintiffs settled for less than \$1 billion, the investor’s percentage would actually go up.

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<sup>31</sup> Jacob Gershman, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, Wall St. J. (Mar. 21, 2018), <https://www.wsj.com/articles/lawsuit-funding-long-hidden-in-the-shadows-faces-calls-for-more-sunlight-1521633600> (emphasis added).

<sup>32</sup> See Funding Agreement Between Treca Financial Solutions and Claimants, *Chevron Corp. v. Donziger*, No. 1:11-cv-00691-LAK-RWL, ECF No. 356-2 (S.D.N.Y. filed Nov. 29, 2011).

Other agreements that have come to light—including in the patent context—have confirmed this business model. One agreement that (perhaps inadvertently) became public was entered into by Gamon Plus, Inc. and the TPLF funder Gerchen Keller Capital (“Gerchen Keller”) in or around February 2016.<sup>33</sup> Under that agreement, Gerchen Keller was to provide approximately \$1.5 million in funding for Gamon’s pursuit of patent claims against Campbell Soup, including payment of certain attorney fees. Gerchen Keller was to be paid two times the amount of its initial investment, plus 20% of any additional proceeds gained from the litigation.

A rule mandating disclosure of TPLF arrangements would ensure that all parties understand the funding arrangements and thus are equipped to better calibrate settlement initiatives.

c. Ensuring Compliance With Ethical Obligations, Particularly The Avoidance Of Conflicts Of Interest

By identifying persons or entities with a stake in the outcome of the litigation, disclosure requirements would allow courts and counsel to ensure compliance with ethical obligations. One of the most important ethical duties of both courts and parties is to avoid conflicts of interest. As one commentator succinctly explained:

[Since] some [funding] entities are multibillion- and multimillion-dollar publicly traded entities, requiring disclosure of their role will allow judges to determine whether they have a conflict of interest in administering a case. And for privately held [funding] entities, the web of personal relationships judges [or other judicial officers] have could be impacted as well, leading to unintentional appearances of impropriety.<sup>34</sup>

Just like Article III federal judges, ITC ALJs are guided by the ethical principles outlined in the Code of Conduct for United States Judges, which mandates disqualification in any proceeding where their impartiality might reasonably be questioned—such as possessing personal bias, prior involvement as a lawyer, or a direct financial stake. ALJs are required to recuse themselves from cases in which they have a conflict of interest. The possibility that a TPLF contract could create a conflict necessitating recusal is not hypothetical. According to Westfleet Advisors, “82% of law firm lawyers say they use legal finance,” and that finance can come from public companies, private companies, family offices, and individuals both here and abroad.<sup>35</sup> Absent an express rule requiring disclosure of TPLF agreements, ALJs do not have all the information they need to make recusal decisions.

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<sup>33</sup> See Funding Agreement Between Gerchen Keller Capital and Gamon Plus Inc. et al. (Feb. 2016).

<sup>34</sup> Tripp Haston, *The Missing Key to 3rd-Party Litigation Funding*, Law360 (Feb. 7, 2017), <https://www.law360.com/articles/888716/the-missing-key-to-3rd-party-litigation-funding>.

<sup>35</sup> <https://askabouttplf.com/?p=10699#:~:text=The%20possibility%20that%20a%20TPLF,family%20offices%2C%20and%20individuals%20both.>

A prime example of this problem arose during the *Chevron Ecuador* case previously discussed.<sup>36</sup> During a deposition in that proceeding, plaintiffs' counsel Steven Donziger was asked to identify the company that had helped finance the underlying suit against Chevron.<sup>37</sup> Upon being ordered to answer the question by the special master assigned to the case, Donziger disclosed that the funder was Burford—one of the largest funders in the world.<sup>38</sup> The special master then disclosed that he was a former co-counsel with the founder of Burford, who at one time sent the special master a brochure about funding one of Burford's cases.<sup>39</sup> The special master also disclosed that he was friends with Burford's former general counsel.<sup>40</sup> The special master did not recuse himself from the racketeering litigation, and the parties did not insist that he do so.<sup>41</sup> Nonetheless, as the special master recognized, the deposition "prove[d] . . . that it is imperative for lawyers to insist that clients disclose who the investors are."<sup>42</sup>

Litigation funding arrangements can involve a variety of financing sources. The only way for ALJs, the Commissioners, and parties to understand and avoid conflicts of interest is disclosure of TPLF contracts. In addition, early disclosure avoids costly satellite disputes regarding standing, ownership interests, settlement authority, and conflicts of interest. Requiring disclosure at the outset of an investigation promotes efficient case management and conserves Commission resources. In addition, early disclosure avoids costly satellite disputes regarding standing, ownership interests, settlement authority, and conflicts of interest. Requiring disclosure at the outset of an investigation promotes efficient case management and conserves Commission resources.

d. Uncovering Potential National And Economic Security Risks

While TPLF raises multiple serious questions related to our civil justice system, one that has only recently begun to receive meaningful attention is whether TPLF threatens U.S. national and economic security. As Professor Maya Steinitz of the Boston University School of Law warned over a decade ago, foreign sources, such as sovereign wealth funds ("SWFs") like the China Investment Corporation, could file "suit against an American company in a sensitive industry such as military technology" and over the course of that litigation, receive "highly confidential documents containing proprietary information regarding sensitive technologies from the American defendant-corporation."<sup>43</sup>

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<sup>36</sup> Jennifer A. Trusz, *Full Disclosure? Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration*, 101 Geo. L.J. 1649, 1650, 1658 (2013).

<sup>37</sup> *Id.* at 1650.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (citation omitted).

<sup>43</sup> Maya Steinitz, *Whose Claim Is This Anyway? Third party Litigation Funding*, 95 Minn. L. Rev. 1268, 1270 (2011). Another early warning on this score came from an ILR publication: Michael E. Leiter, John H. Beisner,

More recently, in 2023, Senator John Kennedy (R-LA) highlighted similar concerns in a letter to Chief Justice John Roberts and former Attorney General Merrick Garland, warning that “by financing litigation in the United States against influential individuals, corporations, or highly sensitive sectors, a foreign actor can advance its strategic interests in the shadows since few disclosure requirements exist in jurisdictions across our country.”<sup>44</sup> Senator Kennedy’s expressed concerns are not limited to foreign-controlled litigation funders operating in the U.S., but also to *indirect* foreign financiers—that is, foreign entities (e.g., SWFs) that may funnel cash through U.S.-based litigation funders and thereby potentially exercise behind-the-scenes direction as to certain lawsuits.<sup>45</sup>

Several other prominent federal legislators have also voiced concerns regarding the risk of foreign influence exerted through litigation funding activity, including Senators John Cornyn (R-TX) and Thom Tillis (R-NC). In a July 11, 2024, letter to the Committee on Rules of Practice and Procedure of the U.S. Judicial Conference, the Senators warned that “[l]itigation funding is an available weapon for foreign investors to attack domestic businesses” and that “[f]oreign adversaries could use litigation funding mechanisms to weaken critical industries or obtain confidential materials.”<sup>46</sup>

U.S. Senators Rick Scott (R-FL) and Marco Rubio (R-FL) (now U.S. Secretary of State) echoed these concerns in letters to the chief judges of Florida’s federal district courts in November 2023. In those letters, they “highlight[ed] the dangers of foreign [TPLF] and the need for more transparency in the federal judiciary as it relates to this matter.”<sup>47</sup> They explained that litigation funding can originate from several foreign sources, including SWFs, and may influence both the nature and direction of a litigation through often undisclosed financial contributions. They further noted that the most concerning outcome would be that “these foreign funders have

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Jordan M. Schwartz & James E. Perry, *A New Threat: The National Security Risk of Third Party Litigation Funding*, ILR Briefly (Nov. 2022), <https://instituteforlegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf> (“[A] foreign adversary could encourage and exploit commercial disputes involving U.S. companies to advance their national interests in a variety of ways.”).

<sup>44</sup> Press Release, U.S. Senator John Kennedy, *Kennedy Urges Roberts, Garland to Take Action to Protect National Security From Foreign Actors Meddling in U.S. Courts* (Jan. 9, 2023), <https://www.kennedy.senate.gov/public/press-releases?ID=1FBC312C-94B8-409B-B0A3-859A9F35B9F5>; Letter from Senator John Kennedy to Honorable Merrick Garland & Honorable John Roberts (Jan. 6, 2023), [https://www.kennedy.senate.gov/public/\\_cache/files/0/7/077acc52-6622-453b-b9a5-bbecd358e136/32C50A661400A5B670DC1D48B8D75E73.letter-to-ag-garland-cheif-justice-roberts.pdf](https://www.kennedy.senate.gov/public/_cache/files/0/7/077acc52-6622-453b-b9a5-bbecd358e136/32C50A661400A5B670DC1D48B8D75E73.letter-to-ag-garland-cheif-justice-roberts.pdf).

<sup>45</sup> See Press Release, U.S. Senator John Kennedy, *Kennedy, Manchin Introduce Bipartisan Protecting Our Courts from Foreign Influence Act to End Overseas Meddling in U.S. Litigation* (Sep. 14, 2023), <https://www.kennedy.senate.gov/public/2023/9/kennedy-manchin-introduce-bipartisan-protecting-our-courts-from-foreign-manipulation-act-to-end-overseas-meddling-in-u-s-litigation>.

<sup>46</sup> Letter from Senators John Cornyn & Thom Tillis to H. Thomas Byron III (July 11, 2024), [https://www.uscourts.gov/sites/default/files/24-cv-m\\_suggestion\\_from\\_senators\\_cornyn\\_tillis\\_-\\_rule\\_26\\_tplf.pdf](https://www.uscourts.gov/sites/default/files/24-cv-m_suggestion_from_senators_cornyn_tillis_-_rule_26_tplf.pdf).

<sup>47</sup> Press Release, U.S. Senator Marco Rubio, *Rubio, Scott Push for Transparency for Foreign Third Party Litigation Funding in U.S. Courts* (Nov. 3, 2023), <https://web.archive.org/web/20250111011234/> <https://www.rubio.senate.gov/rubio-scott-push-for-transparency-for-foreign-third-party-litigation-funding-in-u-s-courts/>.

the potential to provide hostile foreign actors with sufficient sway to exert undisclosed influence on litigation moving through the federal judiciary.”<sup>48</sup>

These concerns were discussed in a December 2023 report by the bipartisan House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party. In that report—*Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party*—the Select Committee recommended that Congress “[d]etermine, and then establish, what guardrails are needed to address the possibility of foreign adversary entities obtaining sensitive IP [intellectual property] through funding third party litigation in the United States.”<sup>49</sup> The Select Committee also recommended “requir[ing] enhanced disclosures for foreign adversary entities and provid[ing] judges with the authority to require enhanced disclosures for certain entities under foreign adversary entity control regarding their funding, and, when appropriate, ownership and connection with the foreign adversary government and dominant political party.”<sup>50</sup>

Executive branch personnel at both state and federal levels have also voiced growing concern about the risks spawned by foreign-sourced financing of U.S. litigation. For example, in December 2022, 14 state attorneys general submitted a letter to the U.S. Department of Justice, bemoaning the secrecy surrounding TPLF and questioning what former U.S. Attorney General Merrick Garland and other top officials were doing to ensure that the practice is not threatening U.S. national security interests.<sup>51</sup>

During a December 2023 speaking engagement, Evan Turgeon, the Chief of the Foreign Agents Registration Act (“FARA”) Unit at the Department of Justice, addressed this important topic in detail.<sup>52</sup> Among other things, Mr. Turgeon discussed FARA’s application to foreign-sourced funding of litigation in the U.S. And quite critically, he specifically identified three potential risks of “undisclosed and undiscoverable” foreign-sourced funding of U.S. litigation:

- Foreign entities doing business in the U.S. may seek to create a competitive advantage as compared to their U.S. competitors by tying up U.S. companies in lengthy and expensive court cases.

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<sup>48</sup> *Id.*

<sup>49</sup> House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party* (Dec. 12, 2023), at 21, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> *See generally* Letter from Honorable Christopher M. Carr (GA), Honorable Jason Miyares (VA) et al. to U.S. DOJ re: Threats Posed by Third-Party Litigation Funding (Dec. 22, 2022), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-55-letter.pdf>.

<sup>52</sup> *See generally* Robert Kelner, Brian Smith & Alexandra Langton, *DOJ Officials’ Remarks Signal New Trends In FARA Activity*, Law360 (Dec. 14, 2023), <https://www.law360.com/articles/1776917/doj-officials-remarks-signal-new-trends-in-fara-activity>.

- Foreign funders of U.S. litigation may gain access to proprietary and sensitive commercial information through litigation discovery.
- Foreign adversaries may fund litigation on political issues that are divisive within the U.S. public.<sup>53</sup>

While the secrecy typically surrounding TPLF makes it impossible to ascertain the precise extent and objectives of foreign-sourced litigation funding in the United States, recent examples make clear that the influx of cash is creating precisely the sorts of national security concerns about which academics and public servants have warned.

A recent lawsuit against ExxonMobil is another recent example of how foreign interests can exploit the U.S. legal system to advance their own economic and political agendas. An Australian billionaire and owner of Fortescue Energy allegedly used his non-profit subsidiary, the Intergenerational Environment Justice Fund (“IEJF”), to fund litigation in the United States against ExxonMobil to benefit his rival business ventures. That case accused ExxonMobil of misleading the public about its plastics recycling initiatives. In response, ExxonMobil filed a countersuit in the U.S. District Court for the Eastern District of Texas against the parties to the initial action, alleging defamation, business disparagement, tortious interference, and civil conspiracy.<sup>54</sup> The countersuit alleges that the private domestic entities, whose lawsuits allegedly are funded and influenced by the IEJF, have engaged in a coordinated smear campaign against ExxonMobil to undermine its advanced recycling initiatives and harm its business reputation. It also accuses the IEJF, a subsidiary of the Australian billionaire’s Minderoo Foundation, of orchestrating this campaign to serve his own business interests. According to the complaint, the IEJF hired the California law firm Cotchett, Pitre & McCarthy to sue ExxonMobil and to recruit U.S.-based environmental non-profits to serve as the named plaintiffs in the case and thus act as proxies for its agenda. The complaint further alleges that in an advisory opinion, the DOJ FARA Unit concluded that the Cotchett firm was required to register as a foreign agent under FARA, an action that ultimately revealed the foreign influence behind the lawsuit. Notably, IEJF’s involvement would not have been known but for the transparency that was required by complying with FARA.

In another example, Purplevine IP Operating Co., Ltd. (“Purplevine”), a China-based firm that markets itself as a one-stop IP service provider, has financed at least four intellectual property lawsuits in U.S. courts against Samsung Electronics Co. and a related subsidiary.<sup>55</sup> Despite the absence of broadly applicable TPLF disclosure requirements, Purplevine’s role in the Samsung litigation was involuntarily disclosed during litigation due to a standing order that the judge overseeing the case—Chief Judge Colm Connolly of the U.S. District Court for the District

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<sup>53</sup> *Id.*

<sup>54</sup> Complaint, *ExxonMobil Corp. v. Bonta*, No. 1:25-cv-00011, ECF No. 1 (E.D. Tex. filed Jan. 6, 2025), [https://s3.amazonaws.com/jnswire/jns-media/09/bd/20843388/ExxonMobil\\_v\\_Bonta.pdf](https://s3.amazonaws.com/jnswire/jns-media/09/bd/20843388/ExxonMobil_v_Bonta.pdf).

<sup>55</sup> Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties*, Bloomberg Law (Nov. 6, 2023), <https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties>; <https://www.purplevineip.com/en/>.

of Delaware—had instituted, which required certain basic disclosures about TPLF usage.<sup>56</sup> That required disclosure, plus follow-up inquiries and facts that emerged at trial, revealed a tangled relationship between Purplevine and the patent claims at issue and suggested that Purplevine may have received and relied upon privileged, confidential and highly sensitive information in bankrolling Staton Techiya, LLC’s patent infringement claims against Samsung.<sup>57</sup> Although the patent technology at issue related to sound systems and thus did not directly implicate national security concerns per se,<sup>58</sup> the alleged misappropriation of discovery and other confidential litigation materials in the case<sup>56</sup> illustrates the kind of misconduct that could unfold when a foreign entity chooses to fund litigation involving sensitive technology (e.g., semiconductors) critical to U.S. national security. illustrates the kind of misconduct that could unfold when a foreign entity chooses to fund litigation involving sensitive technology (e.g., semiconductors) critical to U.S. national security.

*VLSI Technology LLC v. Intel Corp.* is another example of foreign government-owned entities using TPLF to pursue litigation against U.S. companies for possible competitive advantage.<sup>59</sup> The lawsuit involved a campaign of complex patent disputes initiated by VLSI Technology LLC against Intel, with complaints filed in a variety of forums, including in three different federal district courts and courts in China.<sup>60</sup> Fortress Investment Group, a private equity firm now owned by Mubadala, a UAE SWF, orchestrated and managed the funding for the lawsuits against Intel. Notably, Mubadala also owns 82% of Global Foundries, one of Intel’s main competitors.

In short, it is clear that foreign actors, including those with ties to regimes that are hostile to the United States, are using TPLF for various purposes. Disclosure of these arrangements is thus critical to preserving our national security.

## 2) **Suggested Revisions To Proposed Amendment To 19 C.F.R. Part 210**

We appreciate the Commission’s recognition of the need for TPLF transparency in ITC proceedings as reflected in the pending rule amendment proposal. However, we further believe

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<sup>56</sup> See Plaintiff’s Statement Regarding Third-Party Litigation Funding Arrangements, *Staton Techiya, LLC v. Harman Int’l Indus., Inc.*, No. 1:23-cv-00801-JCG, ECF No. 7 (D. Del. filed Aug. 24, 2023).

<sup>57</sup> See Samsung’s Motion for Leave to Amend Answer & Counterclaims to Join Purplevine & PV Law as Counterclaim Defendants at 5-6, 14-15, *Staton Techiya, LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00319-JRG-RSP, ECF No. 65 (E.D. Tex. filed June 13, 2024).

<sup>58</sup> See generally Complaint, *Staton Techiya, LLC v. Harman Int’l Indus., Inc.*, No. 1:23-cv-00801-JCG, ECF No. 1 (D. Del. filed July 25, 2023). An apparent relationship between Purplevine and Chinese consumer electronics giant TCL Corp. raises further questions about whether it or any other foreign actors are investing in U.S. litigation for questionable purposes—i.e., to undermine competitors, including in sensitive industries. See Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties*, Bloomberg Law (Nov. 6, 2023), <https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties>.

<sup>59</sup> *VLSI Technology LLC v. Intel Corp.*, No. 1:19-cv-00977-ADA (W.D. Tex.).

<sup>60</sup> Lauren Castle, *Intel Convinces Jury Fortress Runs VLSI in \$3 Billion Fight*, Bloomberg Law (May 29, 2025), <https://news.bloomberglaw.com/ip-law/intel-convinces-jury-fortress-controls-vlsi-in-3-billion-fight>.

that two revisions to the proposed amendment to 19 C.F.R. Part 210 are necessary to more fully effectuate the Commission's stated objectives.

a. Suggested Revisions to Section 210.14a(a)(1)

As drafted, Section 210.14a(a)(1)'s requirement to disclose "[a]ny parent corporation" or "any entity" "owning stock" in a party to an ITC proceeding would be extremely burdensome for publicly-traded companies. Publicly-traded companies often have significant numbers of entities that own less than 10% of stock, such that disclosing those entities would be unworkable. Accordingly, we propose limiting the requirement to those corporations or entities that own 10% or more of the company's stock. This requirement tracks the disclosure requirements in Federal Rule of Civil Procedure 7.1, as well as Federal Rule of Appellate Procedure 26.1, both of which require parties in federal court to disclose parent corporations and any publicly held company owning 10% or more of the party's stock. Limiting the disclosure in this way would make compliance with the rule more practical without undercutting the underlying purposes of disclosure.

For these reasons, we suggest that Section 210.14a(a)(1) be revised to state: "Any parent corporation and any entity, not including natural person(s), owning *10% or more of its stock.*"

b. Suggested Revisions To Section 210.14a(a)(3)(i)'s Disclosure Of Funding Sources

In response to the ITC's question regarding whether there are other possible financial interests in section 337 investigations that are not required to be disclosed under proposed Sections 210.14a(a)(1) through (3), we agree with the proposed Amendment's exclusion of certain types of loans from the disclosure requirement under Section 214a(a)(3)(i), but believe it is necessary to more explicitly limit the scope of that exclusion. Law firms often use credit lines with prevailing market interest rates (rates at or moderately above the Wall Street Journal Prime Rate) to pay their bills for day-to-day litigation costs on pending matters. In those instances, banks or other financial institutions are simply lending the law firms money (much as they do with other businesses), with no intention of investing in or receiving a direct return from any specific litigation matters. The proposed rule's exclusion of such lending arrangements thus correctly recognizes that such disclosures would serve no purpose, as the lenders are not playing any meaningful role in the lawsuits.

As drafted, however, the proposed exception language in the Amendment sweeps too broadly and would omit disclosure of considerable TPLF activity, defeating the purposes driving the Amendment. First, in recent years, TPLF entities have begun financing litigation by agreeing to provide law firms with loans bearing a high interest rate, often in the 25% per annum range, in exchange for receiving collateralized interests in the attorney fees the firm will receive from the litigation matters specified in the arrangement.<sup>61</sup> In short, rather than taking a potentially very

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<sup>61</sup> Emily R. Siegel, *Mass Tort Lawyers Trapped in Cycle of Debt as Cases Drag On*, Bloomberg Law (Nov. 18, 2024), <https://news.bloomberglaw.com/business-and-practice/mass-tort-lawyers-trapped-in-cycle-of-debt-as->

profitable non-recourse interest in a lawsuit, the TPLF entities are now often obtaining their very substantial profits from TPLF activity through sizable interest payments on large loans, sometimes involving millions of dollars.<sup>62</sup> Alternatively, these may be “portfolio” loans, covering all or most of the cases a law firm has pending in a variety of controversies. Ensuring disclosure of such arrangements is critical because the size of and interest rates for such loans give the TPLF entities considerable leverage over the borrowing law firm.<sup>63</sup> For example, depending on the terms of the arrangement, the lender could demand immediate repayment or decline to provide additional money needed to litigate. Alternatively, if the litigation or proceeding is taking longer than expected to conclude, the TPLF entity could refuse to grant extensions on repayment obligations. The TPLF entity could use such leverage to dictate, among other things, the timing and amounts of settlements, all to serve its own interests, not those of the plaintiffs on whose behalf the litigation was filed in the first place. For the reasons outlined above, the Commission, its ALJs, its staff, and all parties need to know if an undisclosed entity is essentially controlling or strongly influencing the conduct of the litigation – or can exert the power to do so – through these recourse, high-interest loans.

In addition, the word “bank” in the proposed language is undefined and ambiguous. “Bank” could be interpreted to exclude from the disclosure requirement TPLF investors like hedge funds that are often the sources of the recourse, high-interest loans discussed above. As one commentator observed, hedge funds have been “pouring enormous sums of money into funding lawsuits.”<sup>64</sup> By potentially exempting hedge funds from disclosure, the language of the Amendment risks undercutting the very purpose for which it was proposed. To avoid confusion, it would be better to simply not use the term “bank” in framing the disclosure exception.

We propose that the word “specifically” also be deleted from the rule as it may exempt portfolio loans—i.e., loans that funders provide to finance a portfolio of cases—from disclosure, further undercutting the purpose of the rule.

Finally, in response to the ITC’s request for input regarding “whether disclosure of funding or necessary approval in related litigation is relevant and should be included in the disclosures required under proposed paragraphs (a)(3)(i) and (ii) of this section,” we believe that the rule should require disclosure of funding in related civil litigation. ITC proceedings frequently arise in the context of broader civil litigation, and without knowledge of funding arrangements in those parallel proceedings, neither the ITC nor the parties can obtain a complete

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cases-drag-on (“Loans to law firms often come with double-digit interest rates that can exceed 20%. The deals typically mature after three to four years. If cases aren’t resolved by that time, borrowers are forced to restructure the loans—with pricey concessions to lenders—or refinance with a new lender.”).

<sup>62</sup> *Id.*

<sup>63</sup> See Erin Joyce, *Pitfalls to Avoid with Litigation Funding*, Advocate Magazine (Mar. 2021), <https://www.advocatemagazine.com/article/2021-march/pitfalls-to-avoid-with-litigation-funding> (“If, as a requirement to obtain and maintain a litigation-funding loan, the lender dictates the course of the litigation, there is a serious risk that the attorney’s professional judgment might be impaired.”).

<sup>64</sup> Mark Behrens, *Third Party Litigation Funding: A Call for Disclosure And Other Reforms To Address The Stealthy Financial Product That Is Transforming The Civil Justice System*, Cornell J. Law. & Pub. Pol. 34:1 (2025).

and accurate picture of the interests and incentives driving the dispute. For similar reasons, we believe that the disclosure requirements should not differ for investigations under section 337(a)(1)(A) and sections 337(a)(1)(B)-(E). Because ITC proceedings under all these provisions are closely tied to parallel patent and intellectual property litigation, disclosure serves a critical purpose in all section 337 investigations.

With the several foregoing considerations in mind, we suggest that Section 210.14a(a)(3)(i) of the Amendment be revised to state: “That provides funding for the section 337 investigation *or for related civil litigation*, not including (a) insurance or (b) loans bearing standard interest rates (that is, rates do not exceed the Wall Street Journal Prime Rate by more than four percentage points).”<sup>65</sup> Wording the provision in this manner will ensure that loan arrangements that are actually TPLF agreements will not escape disclosure, based solely on their non-recourse status or bank sourcing.

c. Suggested Revisions To Section 210.14a(a)(3) To Require Disclosure Of TPLF Agreements

We suggest that the proposed rule be revised to require the disclosure of TPLF agreements that fall under Sections 210.14a(a)(3)(i) or (ii) to all parties, while allowing the producing party in a particular case to seek from the Commission for good cause shown a protective order blocking or limiting production of the TPLF agreement. In other words, the default position would be that TPLF agreements must be produced, but based on the circumstances of a particular case or the contents of the agreement in that case, the producing party could request that the agreement not be provided at all, be provided only to the Commission on an ex parte basis, or be produced with some portions redacted.

As proposed, the language of the Amendment appears to require disclosure of “the nature of the terms and conditions relating to . . . approval” for arrangements where “approval is necessary for litigation decisions or settlement decisions in the section 337 investigation.”<sup>66</sup> However, limiting disclosure obligations to situations where the approval is necessary for litigation or settlement decisions or limiting disclosures to only the “the nature of the terms and conditions relating to . . . approval” is inconsistent with the stated purpose of the proposed Amendment.

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<sup>65</sup> As of the date of this filing, the Wall Street Journal Prime Rate (“WSJ Prime Rate”) is 6.75%, so only loans with interest rates under 10.75% would be excluded. Federal Reserve Bank, Selected Interest Rates H.15 (June 5, 2026), <https://www.federalreserve.gov/releases/h15/>. The WSJ Prime Rate (and the calculation thereof) is not defined by federal statute. However, that term is referenced and embraced in many federal regulations. *See, e.g.*, 49 C.F.R. Part 1141 (Surface Transportation Board regulation requiring that interest rates in reparation proceedings be calculated using the WSJ Prime Rate); 18 C.F.R. § 35.19a(a)(2)(iii)(A) (Federal Energy Regulatory Commission (“FERC”) regulation referencing the WSJ Prime Rate for calculating electric interest rates); 18 C.F.R. § 154.501(d) (FERC regulation referencing the WSJ Prime Rate for calculating gas interest rates); 18 C.F.R. § 340.1(c)(2) (FERC regulation referencing the WSJ Prime Rate for calculating oil interest rates); 7 C.F.R. § 1726.26 (Rural Utilities Service regulation requiring that interest rates on overdue accounts be calculated using the WSJ Prime Rate).

<sup>66</sup> 19 C.F.R. Part 210 § 210.14a(3)(ii).

For starters, limiting disclosure of the underlying terms and conditions of the agreement to situations where funders have express control over litigation and settlement decisions is insufficient. Such a limitation fails to account for circumstances like those described above with respect to high interest loans where no express control exists, but the terms and conditions of the agreement nonetheless provide the funder with the de facto ability to exert significant influence over the conduct of the litigation and settlement decisions. Indeed, a recent review of the few TPLF arrangements that have become public illustrates precisely why it is so important for the parties and the ITC to review the actual TPLF agreements.<sup>67</sup> While TPLF agreements routinely disclaim funder control over litigation and settlement decisions, the operative terms of those very agreements confer on funders significant—and in some cases decisive—authority over the course of the litigation. Only by examining the actual terms of a funding agreement can the ITC and the parties assess the extent to which funders have “hidden control” over the litigations they finance.<sup>68</sup> As with all other aspects of litigation, tribunals will be greatly assisted in reaching the “right results” if the classic adversarial process is allowed to function—that is, if all parties are allowed to access the applicable TPLF agreements and comment thereon. Further, it will provide some protection against the ALJs and/or staff being embarrassed by future revelations of funder control that were missed due to insufficient adversarial process vetting of the funders’ usual denials of litigation influence.

In addition, it is critical that defense counsel have access to the actual TPLF agreements for many of the same reasons that insurance information is required to be disclosed to the parties in federal civil litigation—i.e., because the disclosure of such information ensures that counsel for both sides can make informed and realistic assessments of the case, grounding settlement and litigation strategies in actual knowledge rather than speculation. It also enables counsel to raise any potential ethical or other issues implicated by the agreements.

For these reasons, we suggest revising Section 210.14a to include an additional subsection (d) that states: “*The disclosure required by this Section must attach a copy of any litigation funding agreements under Section 210.14a(a)(3)(i) or 210.14a(a)(3)(ii), absent an order from the Commissioner finding the disclosing party has demonstrated good cause to withhold such copy in whole or in part.*”

We also suggest revising Section 210.14a(a)(3)(ii) of the Amendment to ensure that entities that have the *authority* to make litigation or settlement decisions are also included in the required disclosures, as follows: “*Who has authority to make litigation decisions or settlement decisions in the section 337 investigation or in the related civil litigation, including the nature of the terms and conditions relating to that authority.*”

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<sup>67</sup> See generally LCJ Rules Suggestion at 2 (“The potency of these hidden control mechanisms may be startling—even ‘amazing’—to those who encounter them for the first time, read boilerplate disavowals of control, or hear funders disclaim control over their funded cases.”).

<sup>68</sup> *Id.*

**3) Revised Text of Section 210.14a Disclosure Rule.**

For ease of reference, the following is a redline of our proposed changes to the Amendment, with deleted text struck through and proposed additions in italics:

§ 210.14a Disclosure rule.

(a) Each nongovernment party to, or a nongovernment party who seeks to intervene, in a section 337 investigation shall file with the Secretary a disclosure statement that identifies:

(1) Any parent corporation and any entity, not including natural person(s), owning *10% or more of its stock*;

(2) Any person or entity that has the legal right based on the unfair act(s) asserted in the complaint to bring a section 337 investigation besides complainant; and

(3) Any person or entity, not including counsel representing the party in the investigation:

(i) That provides funding ~~specifically~~ for the section 337 investigation *or for related civil litigation*, not including ~~personal loan(s), bank loans, or (a) insurance, or (b) loans bearing standard interest rates (that is, rates do not exceed the Wall Street Journal Prime Rate by more than four percentage points); or~~

(ii) *Who has authority to make litigation decisions or settlement decisions in the section 337 investigation or in the related civil litigation, including the nature of the terms and conditions relating to that* ~~authority approval.~~

(b) For each corporation, entity, or person identified, include the identity, business address, and if a legal entity, place of formation.

(c) With respect to paragraphs (a)(1) through (3) of this section, if no such corporations, entities, or person(s) exist or are known by said party, said party may state that there is no, or they are not aware of any, such parent corporation or entity under paragraph (a)(1) of this section and/or such person or entity under paragraphs (a)(2) and (3) of this section.

(d) *The disclosure required by this Section must attach a copy of any litigation funding agreements under Section 210.14a(3)(i) or 210.14a(3)(ii), absent an order from the Commissioner finding the disclosing party has demonstrated good cause to withhold such copy in whole or in part.*

\* \* \*

In sum, the TPLF funding arrangements that have become public demonstrate that the public interest is implicated as TPLF can inject conflicts of interest into a civil lawsuit or proceeding, interfere with a plaintiff's control over his/her lawsuit, frustrate settlement efforts, and even potentially undermine U.S. national and economic security. The only way to know whether a particular litigation funding arrangement presents any of these serious concerns—in an individual case or on a systemic level—is for the existence and terms of the agreement to be disclosed to the other side and the court. Accordingly, ILR urges that 19 C.F.R. Part 210 be amended as proposed, subject to the additional revisions discussed in Section 2 above.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Webb". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew D. Webb  
Senior Vice President, Legal Reform Policy  
U.S. Chamber Institute for Legal Reform