



Office of the President

January 27, 2022

Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**RE: REQUEST FOR INVESTIGATION OF INACCURATE AND MISLEADING
DISCLOSURES IN ACTIVISION BLIZZARD, INC. AGREEMENT AND PLAN
FOR MERGER WITH MICROSOFT CORPORATION**

The Communications Workers of America ("CWA") requests that the Securities and Exchange Commission ("SEC" or "Commission") investigate Activision Blizzard, Inc. ("Activision") based on evidence of inaccurate and misleading disclosures in Activision's Agreement and Plan of Merger with Microsoft Corporation ("Microsoft"), as attached to its announcement of the merger agreement on Form 8K filed January 19, 2022. Our examination of Activision's filing reveals that:

1. Activision states that it is not aware of any effort by its employees to organize a union, when in fact company executives were for several months prior to January 19, 2022, fully aware that a large group of their employees was seeking to organize a union with support from the Communications Workers of American ("CWA").
2. Activision states that there are no ongoing strikes, lockouts, or similar work actions among its workforce. In fact, Activision employees have engaged in multiple strikes and work actions during the time this merger was being discussed by Activision and Microsoft, one of which was still ongoing as of January 19, 2022.
3. Activision states that there is no "material unfair labor practice complaint" filed against the company at the National Labor Relations Board, when in fact just such a complaint, alleging multiple violations of the National Labor Relations Act over several months, was filed by the CWA in September 2021, and is ongoing as of January 19, 2022.

As a result of these omissions, readers of Activision's merger filing may be misled into believing that the company's well-documented workplace disputes, including widespread allegations of abusive behavior including sexual harassment and sexual assault, and multiple strikes and other work stoppages – all of which have received extensive, national coverage in multiple media outlets – have been comprehensively resolved. In fact, these disputes are ongoing, and both Activision management and its board were well aware that these disputes were unresolved. The significant negative effect that the revelation of these disputes has had on Activision's share price since they first became the subject of widespread public attention in late summer 2021, suggests that beyond merely failing to take care to ensure that it made accurate representations to readers of the merger agreement, Activision may have acted with an improper motive to conceal the true status of its workplace disputes.

The Communications Workers of America

The Communications Workers of America ("CWA") represents workers in private and public sector employment in 1,200 chartered CWA local unions. CWA members work in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care, public service and education, manufacturing, and other fields.

Background on Activision Blizzard and Microsoft

Activision Blizzard, Inc. develops and publishes interactive entertainment content and services globally. The company operates through three segments: Activision Publishing, Inc.; Blizzard Entertainment, Inc.; and King Digital Entertainment. It develops and distributes content and services on video game consoles, personal computers, and mobile devices, including subscription, full-game, and in-game sales. The company's key product franchises include Call of Duty, World of Warcraft, Diablo, Hearthstone, Overwatch, and Candy Crush. Activision Blizzard, Inc. is headquartered in Santa Monica, California.

Microsoft Corporation develops, licenses, and supports software, services, devices, and solutions worldwide through multiple segments including Productivity and Business Processes, Intelligent Cloud, and More Personal Computing. It also offers Surface, PC accessories, PCs, tablets, gaming and entertainment consoles, and other devices; Gaming, including Xbox hardware, and Xbox content and services; video games and third-party video game royalties. Microsoft Corporation was founded in 1975, and is based in Redmond, Washington.

A Better ABK/ABK Workers Alliance (these names are used interchangeably) is an organization of Activision Blizzard, Inc. workers that formed in order to work to change Activision Blizzard for the better. A Better ABK/ABK Workers Alliance maintains a Twitter account and a Reddit page, among other social media activities, and is being supported by the CWA.

Legal Authority

Under the Exchange Act of 1933 and the Securities and Exchange Act of 1934, the SEC is charged with protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Rule 12b-20 of the Securities and Exchange Act of 1934 requires companies to disclose, in addition to all information expressly required by a report or other filing, all material information needed to ensure that such required disclosures are “not misleading in light of the circumstances.” Section 18 of the Exchange Act imposes liability for false and misleading statements in SEC filings. Additionally, under Rules 8-K and 14a-12, issuers entering into a “material definitive agreement” are required to issue an announcement on form 8-K, and are permitted to use this announcement to fulfill the requirements of Rule 14a-12, which regulates issuer communications with investors prior to furnishing a proxy statement. The Agreement and Plan of Merger attached as Exhibit 2.1 to Activision’s 8-K filed January 19, 2022, is intended to fulfill the requirements of Rule 14a-12, as shown by the checked box on the cover page of the filing.

Activision’s Misleading Disclosures

In Article III, Section 3.19 (a) and (f) of the Agreement and Plan of Merger, titled “Union Activities” and “No Allegations of Sexual Harassment, Sexual Misconduct, or Retaliation,” respectively, Activision makes a series of statements that clearly contradict the public record. In addition, Activision omits a variety of relevant information without which the statements it makes are misleading.

For instance, in paragraph (a) Activision states:

To the Knowledge of the Company, there are no pending activities or proceedings of any labor union, trade union, works council or any similar labor organization to organize any employees of the Company or any of its Subsidiaries with regard to their employment with the Company or any of its Subsidiaries.

In fact, Activision was aware at the latest by summer 2021 of CWA's organizing campaign, and this activity has both been the subject of news reports as well as public statements by CWA and by Activision employees.

- On July 23, 2021, Activision employees launched A Better ABK “as a strategic organizing effort to unite developers behind a shared set of concerns.”¹
- On September 14, 2021, the CWA filed an Unfair Labor Practice charge against Activision, alleging that over the previous six months the company had repeatedly threatened and disciplined employees for engaging in protected concerted activities.²
- On October 13, 2021, the ABK Workers Alliance and the CWA filed objections to Activision’s settlement with the Equal Employment Opportunity Commission (“EEOC”).³
- On October 30, 2021, A Better ABK posted a demand on Twitter that Activision CEO Bobby Kotick agree to voluntarily recognize a union formed by Activision employees.⁴
- On November 16, 2021, the ABK Workers Alliance staged a walk-out following the publication of an article in *The Wall Street Journal* reporting that Activision CEO Bobby Kotick had knowledge of multiple sexual harassment allegations against Activision executives and sought to minimize disciplinary consequences for them.
- On December 9, 2021, the ABK Workers Alliance announced the creation of a strike fund, and revealed that it had been collecting union authorization cards from Activision employees and had hundreds of signed cards in hand, as reported by *Bloomberg* (in a story entitled “*Activision Workers Take First Step Towards Unionizing.*”).⁵ The collection

¹ Communications Workers of America, press release, “Employees of Activision Blizzard File Unfair Labor Practice Charge Against Gaming Company,” September 14, 2021. <https://cwa-union.org/news/releases/employees-of-activision-blizzard-file-unfair-labor-practice-charge-against-gaming>

² Unfair Labor Practice charge filed by CWA against Activision Blizzard, September 2021. <https://cwa-union.org/sites/default/files/20210910-charge-activision-violation-of-section-7-rights.pdf>

³ Activision settlement with the EEOC, <https://investor.activision.com/consent-decree-with-EEOC>; Games Industry Biz, “Communications Workers of America union also objects to EEOC, Activision Blizzard settlement,” October 13, 2021. <https://www.gamesindustry.biz/articles/2021-10-13-communications-workers-of-america-union-also-objects-to-eeoc-activision-blizzard-settlement>

⁴ A Better ABK, tweet, October 30, 2021. <https://twitter.com/abetterabk/status/1454491290997911554>

⁵ *Bloomberg*, “Activision Blizzard Workers Take First Steps Toward Unionizing,” December 9, 2021. <https://www.bloomberg.com/news/articles/2021-12-09/activision-blizzard-employees-take-steps-toward-unionizing>

of union authorization cards was announced on Activision's internal Slack platform.

Clearly, Activision has known since at least October 30, that at least one labor union was seeking to organize its employees, and knew since December 9, that a union was collecting authorization cards from its employees, making its required disclosure false. Moreover, the walkouts, ULP filing, and public statements by Activision Workers Alliance and CWA clearly demonstrated an active effort to organize Activision employees, and by omitting this information Activision made its required disclosure misleading.

Activision further states that:

There is no strike, lockout, material slowdown, or material work stoppage against the Company or any of its Subsidiaries pending or, to the Knowledge of the Company, threatened directly against the Company or any of its Subsidiaries.

In fact, as noted in part above, there have been multiple strikes and work stoppages at Activision Blizzard since July 2021, at least one of which was ongoing on January 19, 2022, the date on which Activision filed its 8-K. These strikes and work stoppages include the following:

- On July 28, 2021, 350 Activision employees walked off the job and rallied outside the company's main campus in Irvine, CA.⁶
- As noted above, on November 16, 2021, the ABK Workers Alliance staged a walkout following *The Wall Street Journal* report on Kotick's knowledge of sexual harassment at the company.
- On December 6, 2021, about 60 employees at Activision subsidiary Raven Software, along with approximately 140 other Activision employees, staged a walkout to protest announced lay-offs.⁷
- On December 9, 2021, the Activision Workers Alliance announced a strike at Raven Software, which continued until January 22, 2022.⁸

⁶ *The Verge*, "Activision Blizzard Employees Walk Out of Work to Protest Rampant Sexism and Discrimination," July 28, 2021. <https://www.theverge.com/2021/7/28/22598410/activision-blizzard-employee-walk-out-protest-sexism-discrimination-lawsuit>; *Washington Post*, "Blizzard employees walk out over company's handling of discrimination, sexual harassment suit," July 28, 2021. <https://www.washingtonpost.com/video-games/2021/07/27/blizzard-employees-walkout/>

⁷ IGN, "Raven Software Walkout Over Recent Layoffs Gains Support From Blizzard and Other Activision Employees," December 8, 2021. <https://www.ign.com/articles/raven-software-walkout-activision-blizzard-solidarity>

Clearly, as of the date of filing its 8-K, Activision's statement that there is no strike against the company was false, as employees at Raven Software had been on strike since December 9, 2021, and would stay on strike until January 22, 2022. Moreover, by omitting any reference to the multiple walkouts Activision employees had staged between July and December 2021, this statement is misleading.

Activision additionally states that:

There is no material unfair labor practice complaint pending or, to the Knowledge of the Company, threatened before the National Labor Relations Board with respect to any employee of the Company or any of its Subsidiaries.

As noted above, on September 14, 2021, the CWA filed a ULP against Activision alleging multiple violations of the law. The Board agent's investigation of these charges is ongoing, making Activision's statement clearly false.

In paragraph (f) of Section 3.19, Activision states that:

To the Knowledge of the Company, the Company and each of its Subsidiaries have not been party to a material settlement agreement entered into since January 1, 2018 with a current or former officer or employee resolving material allegations of sexual harassment, sexual misconduct or retaliation for making a claim of sexual harassment or sexual misconduct, in each case, that was alleged to have occurred on or after January 1, 2018 in the United States, by either a current (i) officer of the Company or any of its Subsidiaries; or (ii) employee of the Company or any of its Subsidiaries holding a position at or above the level of Senior Vice President. There are no, and since January 1, 2018, there have not been any, material allegations of sexual harassment, sexual misconduct or retaliation for making a claim of sexual harassment or sexual misconduct, in each case, that was alleged to have occurred on or after January 1, 2018 in the United States, by or against any current director, officer or employee holding a position at or above the level of Senior Vice President, in each case, of the Company or any of its Subsidiaries.

⁸ Engadget, "Workers at Activision Blizzard's Raven Software end strike action following union push," January 23, 2021. <https://www.engadget.com/raven-software-end-strike-action-161117591.html>

In fact, Activision has been made aware of multiple allegations of sexual harassment that are alleged to have taken place after January 1, 2018, including:

- In the summer of 2021, an Activision employee informed the company's human resources department that they were experiencing harassment by being misgendered and being shown sexually explicit imagery.⁹
- An Activision employee giving evidence in the NLRB's investigation of unfair labor practice charges testified that they had experienced sexual harassment in the summer of 2021 and reported it to Human Resources.¹⁰
- In its complaint filed July 20, 2021, the California Department of Fair Housing and Employment ("DFHE") notes that "An employee complained to Blizzard Entertainment President J. Allen Brack in early 2019 that employees were leaving due to sexual harassment and sexism. Specifically, this employee noted that women on the Battle.net team were subjected to disparaging comments, the environment was akin to working in a frat house, and that women who were not 'huge gamers' or 'core gamers' and not into the party scene were excluded and treated as outsiders."¹¹
- In its November 16, 2021 story, *The Wall Street Journal* stated that "Since the California lawsuit (filed in July 2021), Activision has received more than 500 reports from current and former employees alleging harassment, sexual assault, bullying, pay disparities and other issues, according to people familiar with the matter." The report also revealed that "[i]n 2020, about 30 female employees who worked in Activision's esports division wrote an email to their unit's leaders saying that female employees had been subject to unwanted touching, demeaning comments, exclusion from important meetings, and unsolicited comments on their appearance. Mr. Kotick was aware of the email, according to people familiar with the matter."¹²

⁹ Worker statement to CWA.

¹⁰ Worker statement to CWA.

¹¹ California Department of Fair Employment and Housing lawsuit against Activision Blizzard, Inc. in the Superior Court of the State of California, Case No. 21STCV26571, at p16.

<https://s3.documentcloud.org/documents/21014562/blizzard-activision-lawsuit-ca-dfeh.pdf>.

¹² *Wall Street Journal*, "Activision CEO Bobby Kotick Knew for Years About Sexual-Misconduct Allegations at Videogame Giant, November 16, 2021. https://www.wsj.com/articles/activision-videogames-bobby-kotick-sexual-misconduct-allegations-11637075680?mod=article_inline

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While it is unclear if any of the employees who lodged complaints or allegations of harassment noted above were alleging that executives at the Senior Vice President level or above engaged in such harassment, by omitting mention of any of these post-2018 allegations, Activision's statement seems designed to mislead readers into believing that it has been several years since any serious sexual harassment allegations have been leveled at company employees, managers, or executives. Given the public attention focused on sexual harassment allegations at Activision, such misleading disclosures could certainly affect investment decisions by readers of Activision's SEC filings.

Conclusion

Activision makes a series of statements in its Agreement and Plan of Merger that are clearly contradicted by available evidence, and others that omit key information, thus rendering them misleading. We urge the SEC to investigate this claim and take appropriate action to remediate the situation and ensure that readers of Activision's filings have accurate disclosures available as they consider the proposed merger with Microsoft.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane Larson", with a stylized flourish at the end.

Shane Larson
Senior Director, Government Affairs and Policy