



Zevin Asset Management

January 24, 2023

Via E-Mail

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. 4-784, Letter of Support for Rulemaking Petition: Russia & Belarus Business Disclosure

Dear Ms. Countryman,

Zevin Asset Management, a recognized leader in socially responsible investment, is writing to support Petition 4-784 (the Petition), filed on April 14, 2022 by the former Minister of Finance of the Republic of Ukraine, the Ukrainian American Bar Association, and Razom for Ukraine, a leading NGO active in humanitarian relief and advocacy for Ukraine (together referred to as “Petitioners”), titled “Rulemaking petition requesting the Commission enact a rule requiring issuers to disclose their business dealings in and with the Russian Federation and the Republic of Belarus.” As a prudent fiduciary, our institution considers environmental, social, and governance (ESG) factors in the management of investments across asset classes. ESG issues have a significant impact on the value of our investments, and we actively seek to understand how companies address certain ESG factors.

We strongly support Petitioners’ rationale that whether, and to what extent, issuers are doing business in or with the Russian Federation (Russia) or the Republic of Belarus (Belarus) is material information for our investment decisions. The partial mobilization decree which requires companies in Russia to assist with conscription and provide material support for the war presents significant risks to public companies. This development makes mandated disclosure increasingly relevant to investors.

In particular, President Vladimir Putin’s partial mobilization decree executed through Article 9 of Federal Law No. 31-FZ allows the government to call upon multinational companies to support mobilization plans and could create further material legal, regulatory, and operational risks for companies and their shareholders.¹ Though the mobilization effort was suspended in November 2022,

¹ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation," <https://base.garant.ru/136945/> (accessed January 23, 2023).

Russia is expected to recruit 700,000 more conscripts by February 2023.² We believe multinational companies' risk of providing support to the war effort through participation in the partial mobilization process, complying with applicable Russian law by providing resources, or other proximity to Russia and Belarus necessitates that companies provide comparable and clear information on their exposure to Russia and Belarus. The requested disclosure would enable investors to improve investment decisions, fulfill ESG mandates and their fiduciary duties, protect their ability to exercise shareholder rights, and maximize the value of their assets.

We appreciate the Commission has taken steps towards expanding transparency by releasing the "Sample Letter regarding disclosure pertaining to Russia's invasion of Ukraine and related supply chain issues." We urge the Commission to expand the Sample Comment Letter to require more consistent, comparable, and decision useful disclosures related to Russia and Belarus including:

- Quantitative financial and operational information on revenues, expenses, assets and liabilities and the extent of operations related to Russia and Belarus including information on taxes paid or owed to Russian or Belarusian governmental entities – with a particular emphasis on the ways in which they have been asked or ordered to implement the partial mobilization decree;
- Statements on the direct or indirect use of the consolidated entity's products or services by the Russian or Belarusian government or any sanctioned entity and a description of Know Your Customer (KYC) or other compliance procedures in place in relation to such use;
- Statements as to divestments or exits from Russia and Belarus in the case of issuers who have made public statements of intentions to divest or exit; and
- Information regarding proximity to the human rights risks associated with the invasion.

1. We support the Petitioner's request for supplemental rulemaking because proximity to Russia and Belarus, and the associated human rights risks, is material to our investment decisions

As detailed in the Petition, continued operations within Russia and proximity to Russian and Belarusian entities entail risks of supporting, facilitating, or financing Russia's acts of aggression, violations of international humanitarian law, complicity in its combatants' war crimes, and systemic human rights abuses, including attacks on civilian infrastructure, unlawful occupation, and extrajudicial killings of civilians.³ Zevin Asset Management finds information regarding companies' operations, business/value chain relationships, direct and indirect transactions, and direct and indirect customers in

² Evan Simko-Bednarski, "Russia readying quiet mobilization of 700,000 troops for Ukraine war: report," *Politico*, January 18, 2023, <https://nypost.com/2023/01/18/russia-readying-quiet-mobilization-of-700000-troops-report/> (accessed January 23, 2023).

³ Marco Sassòli, "Ukraine Symposium -- Results of a First Enquiry into Violations of International Humanitarian Law in Ukraine," *Lieber Institute - Westpoint*, April 14, 2022, <https://lieber.westpoint.edu/results-first-enquiry-violations-ihl-ukraine/> (accessed January 23, 2023).

Russia and Belarus significant in making our investment decisions. This information is doubly material as it is necessary to understand 1) a company's social impact on Russia's invasion of Ukraine, and 2) the corresponding legal, regulatory, operational, and financial risks that could affect the value of our clients' assets.

Under the United Nations Guiding Principles on Business and Human Rights, investors have a responsibility to ensure their holdings are not causing, contributing to, or linked to violations of internationally recognized rights.⁴ Information regarding our portfolio companies' exposure to Russia's egregious violations of international law and recognized rights is material to identify and mitigate our connection to human rights harms. In addition, continued proximity to these abuses presents legal, regulatory, operational, and financial risks that could significantly impact the value of any shareholder's investment.⁵

a. Increasing legal risks associated with continuing to do business with Russia and Belarus

Companies operating internationally are subject to the ever-growing national regimes of civil and criminal liability for corporate complicity in conflict. Specifically given the risk of providing support to the war effort under the partial mobilization decree, we find newly enacted laws, recent litigation trends, and proposed legislation present material legal risks for companies with continued exposure to Russia and Belarus. Under the French Duty of Vigilance Law, companies subject to the French jurisdiction can face liability for failing to identify and mitigate human rights risks, such as complicity in Russia's invasion of Ukraine.⁶ Similarly, the recent Canadian ruling in Nevsun found companies could be liable for extraterritorial violations of norms of customary international law, which could include the crimes against humanity and war crimes currently occurring in Ukraine.⁷ Proposed legislation seeking an amendment to the United States' Alien Tort Statute to clarify the statute as a tool of corporate liability for extraterritorial human rights harms could also expand the legal risks for proximity to Russia's invasion of Ukraine.⁸ Finally, recent rulings in the French and Swedish courts have upheld criminal

⁴ "United Nations Guiding Principles on Business and Human Rights," Office of the United Nations High Commissioner for Human Rights, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed January 23, 2023).

⁵ See Jeffrey Sonnenfeld, Steven Tian, and Steven Zaslavsky, "Businesses that refuse to leave Russia are experiencing the greatest costs," *The Washington Post*, <https://www.washingtonpost.com/opinions/2022/04/26/businesses-that-left-russia-not-hurting-better-off/> (accessed January 23, 2023).

⁶ See Stephane Brabant and Elsa Savourey, "France's Corporate Duty of Vigilance Law: A closer look at the penalties faced by companies" *International Review of Compliance and Business Ethics*, December 14, 2017, <https://media.business-humanrights.org/media/documents/d32b6e38d5c199f8912367a5a0a6137f49d21d91.pdf> (accessed January 23, 2023).

⁷ Preston Lim, "Canadian Supreme Court Allows Corporate Liability for International Law Violations," *Lawfare*, March 12, 2020, <https://www.lawfareblog.com/canadian-supreme-court-allows-corporate-liability-international-law-violations/> (accessed January 23, 2023).

⁸ William S. Dodge and Oona Hathaway, "Answering the Supreme Court's Call for guidance on the Alien Tort Statute," *Just Security*, June 3, 2022, <https://www.justsecurity.org/81730/answering-the-supreme-courts-call-for-guidance-on-the-alien-tort-statute/> (accessed January 23, 2022).

liability for companies complicit in extraterritorial crimes against humanity and war crimes, imposing steep financial penalties.⁹

b. Regulatory risks associated with continuing to do business with Russia and Belarus

Companies with continued exposure to Russia and Belarus face significant regulatory risks, such as sanctions, export controls, and U.S. Securities and Exchange Commission (SEC) investigations that may affect the value of our clients' assets. In the wake of Russia's invasion of Ukraine, the United States has issued an unprecedented array of sanctions and export controls against Russian and Belarusian state and private actors.¹⁰ Continued proximity and connection to these actors presents a clear regulatory risk with a potential for steep financial impact. For example, in 2021, Keysight Technology was penalized \$6.6 million for unlawfully exporting technology to restricted countries, specifically including Russia.¹¹ Furthermore, with the implementation of the partial mobilization decree, companies operating in Russia are at a greater risk of transacting with sanctioned individuals or entities as they may be required to comply with government requests for employee conscription, the delivery of equipment to assembly points or military units, and providing information, buildings, communications, land plots, transport, and other material means of support to the war effort.¹²

c. Operational and financial risks associated with continuing to do business with Russia and Belarus

Companies with continued proximity to Russia and Belarus face operational and financial risks that could impact investor asset holdings. Due to the mass exodus of companies and qualified personnel leaving the Russian market, the resulting slowdown and disruptions in the Russian and Belarusian economies, and the legal and regulatory risks described above, companies that remain exposed to Russia and Belarus may experience operational disruptions, such as loss of suppliers, partnerships, and

⁹ "Historic victory before French Supreme Court on the indictment of multinational Lafarge for complicity in crimes against humanity in Syria," European Center for Constitutional and Human Rights, July 9, 2021 <https://www.ecchr.eu/en/press-release/historic-victory-before-french-supreme-court-on-the-indictment-of-multinational-lafarge-for-complicity-in-crimes-against-humanity-in-syria/> (accessed January 23, 2023); "Sweden charges Lundin Energy executives with complicity in Sudan war crimes," *Reuters*, November 11, 2021, <https://www.reuters.com/world/africa/sweden-charges-lundin-energy-executives-complicity-sudan-war-crimes-2021-11-11/> (accessed January 23, 2023).

¹⁰ "U.S., Allies Impose Further Sanctions, New Export Controls on Russia as Military Advances," Holland & Knight, February 28, 2022, <https://www.hklaw.com/en/insights/publications/2022/02/us-allies-impose-further-sanctions-new-export-controls-on-russia> (accessed January 23, 2023).

¹¹ "U.S. Department of State Concludes \$6.6 Million Settlement of Alleged Export Violations by Keysight Technologies, Inc.," U.S. Department of State, August 9, 2021, <https://www.state.gov/u-s-department-of-state-concludes-6-6-million-settlement-of-alleged-export-violations-by-keysight-technologies-inc/> (accessed January 23, 2023).

¹² Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation," <https://base.garant.ru/136945/> (accessed January 23, 2023).

customers;¹³ difficulty maintaining skilled employees;¹⁴ harm to reputation;¹⁵ and/or difficulty delivering goods/services.¹⁶ Companies supporting, facilitating, or financing Russia's invasion of Ukraine could also see a direct financial impact from consumer pressure, Russian nationalization of assets, or a decrease in stock price. For example, in a step towards nationalization, Putin issued a decree in June 2022 to transfer partial rights in the Sakhalin-2 oil and gas development to a newly created Russian company, jeopardizing the American and Japanese partners' interest.¹⁷ Relatedly, in January 2023, a Russian court ordered that \$488 million of assets of German industrial gasses company Linde to be frozen based on the request of a Russian joint venture, owned by the sanctioned Russian company Gazprom.¹⁸ President Putin's partial mobilization legislation could also lead to companies losing access to employees, structures, land, and transportation services, and other inventory and the companies can only seek compensation for losses through a designated government process.¹⁹

Transparency regarding the scope and details of proximity to Russia's invasion of Ukraine and the company's risk management is crucial to protect our interests from the material risks associated with continued business/support for Russia and to ensure investors rights are protected.

d. Companies should not be given discretion for disclosure of proximity to Russia and Belarus

Disclosures in standard filings too often use general language couched in cautionary terms to avoid conveying any meaningful information and demonstrating issuers do not believe risks are material. Similarly, while companies have provided information regarding their operations in Russia, steps to exit the market, or justifications for continuing operations, these statements are seriously

¹³ Almaz Kumenov, "Kazakhstan: CPC pipeline shutdown poses serious economic threat," *Eurasianet*, March 23, 2022, <https://eurasianet.org/kazakhstan-cpc-pipeline-shutdown-poses-serious-economic-threat> (accessed January 23, 2023).

¹⁴ Georgi Kantchev, Evan Gershkovich, and Yuliya Chernova, "Russia's brain drain: Hundreds of thousands of professionals and highly skilled workers have left country since Putin's invasion of Ukraine," *The Wall Street Journal*, April 11, 2022, <https://www.marketwatch.com/story/russias-brain-drain-hundreds-of-thousands-of-professionals-and-highly-skilled-workers-have-left-country-since-putins-invasion-of-ukraine-11649688506> (accessed January 23, 2023).

¹⁵ Clara Hudson, "Reputational Concerns Mount as US Companies Reconsider Russia," *Bloomberg Law*, June 15, 2022, <https://news.bloomberglaw.com/esg/reputational-concerns-mount-as-us-companies-reconsider-russia> (accessed January 23, 2023). Reporting already indicates businesses struggled to maintain experienced staff after the initial mobilization effort forced many employees to join the military effort or flee the country. Boris Grozovski, "Russia's Economy at the End of 2022: Deeper Troubles," The Wilson Center, November 23, 2022, <https://www.wilsoncenter.org/blog-post/russias-economy-end-2022-deeper-troubles> (accessed January 23, 2023).

¹⁶ Ron Bousso and Dmitry Zhdannikov, "Kazakh oil flows caught in Russian export problems, traders say," *Reuters*, March 1, 2022, <https://www.reuters.com/business/energy/exclusive-kazakh-oil-flows-caught-russian-export-problems-traders-say-2022-03-01/> (accessed January 23, 2023).

¹⁷ Stephen Stapczynski and Garfield Clinton Reynolds, "Putin Swoop on Gas Plant Risks Forcing Foreign Partners Out," *Bloomberg*, June 30, 2022, <https://www.bloomberg.com/news/articles/2022-06-30/putin-signs-order-to-move-sakhalin-2-to-russian-entity-nhk-says> (accessed January 23, 2023).

¹⁸ "Russia freezes Linde assets worth \$488 mln," *Reuters*, January 2, 2023, <https://www.reuters.com/markets/europe/russia-freezes-linde-assets-worth-488-mln-2023-01-02/> (accessed January 23, 2023).

¹⁹ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation," <https://base.garant.ru/136945/> (accessed January 23, 2023).

flawed.²⁰ These statements have often failed to adequately disclose the entirety of proximity to Russia and Belarus, provided untenable justifications for remaining in the Russian market, or recited empty human rights commitments. For example, JPMorgan Chase failed to disclose that it continues to provide services to companies trading Russian oil and gas and that its Russian securities investment trust holds shares in Rosneft, Sberbank, and Gazprom, in its statements condemning Russia's invasion of Ukraine.²¹ Since Russia's invasion, JPMorgan Chase wrote off nearly \$1.5 billion in Russian assets, its profit was down 42 percent as of April 2022, and Ukraine is pursuing war-crime charges against the leaders of the institution.²² The company's proximity to Russia and Belarus and its corresponding financial losses make clear investors' need for access to this type of information.

e. Investors require information from their portfolio companies regarding proximity to Russia and Belarus to fulfill ESG mandates and human rights commitments

Investors failing to accurately disclose material information regarding proximity to Russian risks may face scrutiny from the SEC. For example, in May of 2022, the SEC found The Bank of New York Mellon Corporation had made material misstatements and omissions regarding investment decisions for its ESG funds, settling with the financial institution for a \$1.5 million penalty.²³ The Commission has also opened similar investigations into Goldman Sachs and Deutsche Bank. Given that ESG considerations typically include human rights, there could be regulatory risk facing investment firms for failing to properly disclose or misstating ESG information regarding proximity to Russia and Belarus.²⁴

²⁰ For example, Chevron, a US-based oil and gas company, publicly declared it had limited exposure to Russia and Ukraine, stating it had no exploration or production activities there. Upon limited investigation, Chevron holds an interest in a pipeline servicing the Russian, Novorossiysk port and is accused of commingling sanctioned/unsanctioned oil and distributing the mixed crude blend abroad. Chevron's connection with Russian oil and gas customers is material information that identifies significant risk of sanctions violations and linkage to the main industry financing Putin's war. See "Exploration and Production in Eurasia," Chevron, <https://www.chevron.com/operations/exploration-production/exploration-production-in-eurasia> (accessed January 23, 2023); Ron Bousso and Dmitry Zhdannikov, "Kazakh oil flows caught in Russian export problems, traders say," *Reuters*, March 1, 2022, <https://www.reuters.com/business/energy/exclusive-kazakh-oil-flows-caught-russian-export-problems-traders-say-2022-03-01/> (accessed January 23, 2023).

²¹ Jamie Dimon, "Chairman & CEO Letter to Shareholders," JPMorgan Chase & Co., April 4, 2022, <https://reports.jpmorganchase.com/investor-relations/2021/ar-ceo-letters.htm> (accessed January 23, 2023); Kate Duffy, "Ukraine will pursue war-crimes charges against leaders of JPMorgan Chase, Citi, and HSBC over Russia financing, Zelenskyy's economic advisor says," *Business Insider*, July 27, 2022, <https://www.businessinsider.com/ukraine-zelenskyy-pursue-war-crimes-charges-leaders-jpmorgan-citi-hsbc-2022-7> (accessed October 18, 2022); "Holding Megabanks Accountable: Oversight of America's Largest Consumer Facing Banks," U.S. House Committee on Financial Services, September 21, 2022, <https://www.congress.gov/event/117th-congress/house-event/115151> (accessed January 23, 2023).

²² Ken Sweet, "JPMorgan Profits Drop 42%, Bank Writes Down Russian Assets," *U.S. News & World Report*, April 13, 2022, <https://www.usnews.com/news/business/articles/2022-04-13/jpmorgan-profits-drop-42-bank-writes-off-russian-assets> (accessed January 23, 2023).

²³ "SEC Charges BNY Mellon Investment Adviser for Misstatements and Omissions Concerning ESG Considerations," U.S. Securities and Exchange Commission, May 23, 2022, <https://www.sec.gov/news/press-release/2022-86> (accessed January 23, 2023).

²⁴ Lananh Nguyen and Matthew Goldstein, "Goldman Sachs is Being Investigated Over E.S.G. Funds," *The New York Times*, June 12, 2022, <https://www.nytimes.com/2022/06/12/business/sec-goldman-sachs-esg-funds.html> (accessed January 23, 2023).

In order to prevent and mitigate such risks, it is therefore essential for investors to have access to disclosures from their portfolio companies regarding operations and relationships in Russia and Belarus.

2. We urge the Commission to expand the Sample Letter to ensure robust disclosure of material risks related to Russia and Belarus

We applaud the Commission’s issuance of the Sample Comment Letter and understand its intent to expand corporate transparency regarding proximity to Russia and Belarus. While the Sample Letter is a positive step towards sufficient disclosures, it provides issuers with overly broad discretion to choose what information is “material” and therefore required to be disclosed. As described above, any proximity to Russia and Belarus and their flagrant violations of international and human rights law is material and should be disclosed to ensure investors have the “total mix” of information relevant to a company’s risks. Specifically in light of the new decree of partial mobilization, we call on the Commission to adapt the Sample Comment Letter to require objective reporting on operations in, and proximity to, Russia, Belarus, and their associated human rights violations.

Specifically, we ask that the Sample Letter require quantitative information regarding possible connections to the Russian and Belarusian regimes and any impact on stakeholders, including rights-holders, and additional qualitative information, including the following:

1. Number of employees, contractors, or agents (hereinafter employees) operating in Russia, Ukraine, or Belarus and at risk of conscription to Russian forces;
2. Number of military summonses received seeking conscription of employees;
3. Description and value of tangible or intangible assets in Russia, Ukraine, or Belarus;
4. Revenue, expenses, EBITDA (e.g., earnings before interest, taxes, depreciation, and amortization) and profit directly or indirectly associated with entities organized or located in Russia or Belarus;
5. Number of products offered with end-users located in Russia and/or Belarus and whether any of these products can be considered dual-use (ie, with military as well as civilian applications) and description of those end-users/customers;
6. Description of services provided to customers in Russia or Belarus;
7. Number of inputs (e.g., supplies, logistical services) and total costs acquired from a company headquartered in or organized in Russia or Belarus;
8. Number of inputs (e.g., supplies, equipment, services) supplied, or requested to be supplied, in support of Russia’s partial mobilization;
9. Total taxes, fees, or penalties paid or owed to any government entity in Russia or Belarus;
10. All investments, including total value, in entities headquartered, organized, or operating in Russia or Belarus;

11. All partnerships, including but not limited to joint ventures, subsidiaries, initiatives, or projects, with any Russian or Belarus state-owned or -affiliated entities; and
12. All commercial relationships with any companies involved in the Russian weapons and/or defense value chain and/or the cybersecurity value chain.

We do not believe these additional disclosures will result in significant costs or burdens to issuers as the information requested should be available through other non-public compliance, due diligence, and accounting practices. Furthermore, we ask the Commission to actively consider the requested disclosure requirements in the course of its review of periodic filings and registration statements as the standard for proper reporting to ensure that the necessary transparency is required of all issuers.

In conclusion, Zevin Asset Management supports the Petitioners' request for supplemental rulemaking as a necessary step to protect investors' rights and make informed decisions regarding their assets. To ensure investors have consistent, comparable, and decision useful information, we also urge the SEC to adapt the Sample Letter and enforce our proposed requirements as the standard for material disclosures regarding Russia, Belarus, and their unlawful war of aggression against Ukraine.

Thank you for your time and consideration,



Sonia Kowal
President
Zevin Asset Management