April 11, 2022

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. S7-06-22; Modernization of Beneficial Ownership Reporting; Release Nos. 33-11030; 34-94211

Dear Ms. Countryman,

We appreciate the opportunity to provide comments on the proposed rules relating to the Modernization of Beneficial Ownership Reporting. One of us, Charlie Penner, has been working in shareholder activism for over a decade, starting in traditional activism and more recently focusing on expanding activist efforts to environmental, social, and governance (ESG) issues that are material to long-term investors. Examples include campaigns to encourage Apple to give families more effective tools to address the negative impacts of excessive screen time on kids and to place highly qualified directors on ExxonMobil's board to help better prepare for the future in a gradually decarbonizing world. The other, Professor Bob Eccles, has been working for decades to demonstrate that companies need to manage their material ESG issues in order to generate long-term shareholder value. He was a tenured professor at the Harvard Business School and now has an appointment at the Saïd Business School at the University of Oxford. He is also the Founding Chairman of the Sustainability Accounting Standards Board (SASB) and one of the founders of the International Integrated Reporting Council (IIRC).

Shareholder activism has long served as a market-driven solution when boards and management have ignored shareholder concerns like poor governance, wasteful spending, or excessive management compensation and, more recently, concerns like climate change, human rights in company supply chains, responsible technological development, and other ESG matters. If activists are successful, they can be rewarded for their efforts by an increase in the value of their holdings, which is shared by all other existing shareholders. Activist shareholders are a small percentage of the overall market, and to be successful they must offer ideas that will resonate with other shareholders, including long-term investors. While many shareholders engage with companies, activists are unique in their ability to put shareholder democracy into action by giving shareholders a choice of new board representation in the small number of cases where such change is warranted. Otherwise, directors of public company boards run unopposed, which is the case at almost every public company every year.

For almost as long, corporate interest groups have sought to avoid the accountability that shareholder activism creates, including putting pressure on the SEC to make narrow changes like the ones the SEC has proposed that would reduce the incentives for such activity. In prior cases, under both Republican and Democratic administrations, such attempts have failed to gain traction at the SEC, which has listened to shareholders who have made the case that they benefit

overall from activist efforts, which they can support or oppose, and do not want the balance tilted in favor of inoculating companies from accountability.[i]

While the SEC argues in its release that such investors will benefit from earlier disclosure of activist efforts, this is paradoxical given that forcing such earlier disclosure will reduce the incidents of such value-creating activity. It is telling that the groups supporting such changes have been almost exclusively those seeking to protect boards and management teams from being held accountable by their shareholders. In the past, the SEC has opted not to side with such corporate advocates, which makes sense given the likely impact of such changes on activism, the empirical evidence about the net benefits of activism to investors, and the long-standing balance between providing necessary disclosure and not overly burdening beneficial economic activity, which was explicitly recognized by the drafters of the Williams Act themselves.

This is why we are so confused by the SEC's proposed changes, which ignore entirely the impact of such changes, including on the growing ESG activist movement, and include amendments to beneficial ownership reporting obligations that would chill valuable conversations between investors regarding material ESG matters. None of the arguments for placing such new burdens and complications on shareholder engagement have grown stronger in recent years. In fact, they have grown weaker as activism has continued to evolve to focus not just on near-term corporate finance and governance matters but to longer-term considerations including the importance of a company's relationship to its workers, customers, society, and the planet to creating long-term value for shareholders.

A good example of the function activists can serve in the public markets is the recent ExxonMobil campaign. For years, ExxonMobil's shareholders had called upon the company to add directors with relevant energy experience to help the company navigate the challenges of the energy transition. However, it took a shareholder activist campaign to actually give shareholders that choice, which they chose to embrace. As the New York Times noted, this effort showed “there is a path for shareholder activism to change how companies approach issues like racial diversity and the environment, often considered distractions from producing profits."[ii] While some claim that shareholders should not concern themselves with ESG considerations, we disagree. As a growing number of investors have realized, the long-term value of the typical investor's portfolio is increasingly threatened by short-term thinking about material ESG matters.

The changes proposed by the SEC move in the wrong direction by disincentivizing shareholder activism of any type without addressing the substantive tradeoffs in doing so. By eroding a powerful mechanism for ensuring corporate accountability, these changes threaten public trust in our capital markets. For these reasons, we respectfully encourage the Commission to reconsider this proposal. We are, of course, available at your convenience to discuss further if helpful.

Best,

Charlie Penner and Bob Eccles

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[i] Gina Chon, *Share Buying Plan Opposed*, WALL STREET JOURNAL (August 20, 2011) ("A diverse group of investors are lobbying against a proposed change in a federal rule that would speed up the time frame for alerting the public to the amassing of shares in a company ... Investors resisting the Wachtell proposal

include big money managers BlackRock Inc., TIAA-CREF and T. Rowe Price Group Inc., public pension funds California State Teachers' Retirement System, Florida's State Board of Administration, New York State Common Retirement Fund and Ontario Teachers' Pension Plan, union pension funds and activist hedge funds Jana Partners LLC and Pershing Square Capital Management, according to SEC public documents.")

[ii] Matt Phillips, *Exxon's Board Defeat Signals the Rise of Social-Good Activists*, THE NEW YORK TIMES (June 9, 2021)