T. Rowe Price®
INVEST WITH CONFIDENCE

Submitted via e-mail

April 11, 2022

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Modernization of Beneficial Ownership Reporting (File No. S7-06-22)*

Dear Ms. Countryman:

We are writing in response to the SEC's proposal with respect to beneficial ownership reporting on Schedules 13D and 13G.[1] The proposal represents a major overhaul of multiple important aspects of the SEC's beneficial ownership reporting regime, and if adopted, would require much more frequent and accelerated reporting. For reasons explained below, we think the SEC has significantly overstated the benefits of that reporting to long-term investors and underestimated the harm that it will have on qualified institutional investors (QIIs), particularly those like T. Rowe Price that have an active investment style. For the reasons explained below, we urge the SEC to reconsider this proposal.

T. Rowe Price is a member of the Investment Company Institute, Investment Advisers Association, and SIFMA's Asset Management Group. Each of those organizations submitted comments that we broadly endorse, but given that they represent a wide array of asset managers, we felt compelled to write individually from the perspective of an active asset manager that does not invest for control.

From that perspective, we are deeply concerned with two aspects of the SEC's proposal – much more frequent 13G filings with accelerated filing deadlines, and an expanded definition of "group" to determine when unrelated investors may have acted in concert. Below, we provide background on our perspective and explain our positions on those two aspects of the proposal.

In addition, while we are not "activist" investors, we have serious concerns that the SEC's proposed changes to the 13D regime (and its separate proposal on the disclosure of certain swap instruments) are designed to discourage activism. For reasons explained at the end of this letter, we and other long-term investors have a strong interest in preserving the important corrective mechanism that activism serves. We oppose the SEC's proposed changes to the 13D regime on that basis.

[1] *See Modernization of Beneficial Ownership Reporting*, Release Nos. 33-11030 and 34-94211 (Feb. 10, 2022); 87 Fed. Reg. 13846 (March 10, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-03-10/pdf/2022-03222.pdf.

Background on T. Rowe Price and Our Perspective as an Active Manager

Founded in 1937, T. Rowe Price Group, Inc. is a global investment management organization with $1.54 trillion in assets under management as of February 28, 2022. The organization provides a broad array of mutual funds and actively managed exchange traded funds, sub-advisory services, and separate account management for individual and institutional investors, retirement plans, and financial intermediaries.

Although we employ a variety of investment styles, T. Rowe Price is known for strategic investing and "active management," meaning that most of our portfolios are constructed by investment professionals who focus on detailed industry and company analysis, while taking into account valuation attributes and other factors to select the best opportunities for their particular portfolio.

We do not initiate positions for the purpose of gaining control.[2] We routinely make hundreds of 13G filings each year as a QII, which are conditioned on the fact that our investments have not been made with the purpose nor effect of changing or influencing control.[3] In contrast, we very rarely make 13D filings, and in fact have done so in only two instances over the past ten years.[4]

Proposed Changes to 13G – More Frequent Filings with Accelerated Deadlines

The SEC proposes shortening the initial Schedule 13G deadline to five business days after the end of the month.[5] As the SEC recognizes, this would be a significant change for QIIs considering both the current deadline (45 days after the applicable calendar year) and the filing requirements for other forms that QIIs generally file, including the 60-day deadline for Form N-Q and the 45-day deadline for Form 13F.

While we generally support measures intended to bring transparency to the markets, we cannot support the SEC's proposals with respect to 13G filings. The 13G reporting regime is designed to balance the need for market information (in this case, data on large non-control ownership stakes

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[2] For a more fulsome discussion of T. Rowe Price's investment style and the differences between "active" investors and "activist" investors, see our comment letter to the Federal Trade Commission on its proposal to amend the Hart-Scott-Rodino (HSR) premerger notification rules, available at https://www.regulations.gov/comment/FTC-2020-0085-0015 (February 1, 2021).

[3] We have made 2,820 Schedule 13G filings in the past five years. In our comment letter to the FTC, we noted that we have never in our 85-year history made an HSR filing on behalf of any of our funds or client accounts. The HSR filing rules include an exception, similar to 13G, for investors that have "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 16 CFR § Section 801.1(i)(1).

[4] In both of those cases, T. Rowe Price funds or other clients were long-term investors in a company that was the subject of a tender offer by other investors seeking control, and we made our views public on the terms of the transaction. In neither case did we originally acquire the position with the intent to influence management or exercise control.

[5] The SEC summarizes all of the filing deadline changes in a helpful chart. See 87 Fed. Reg. at 13848. With respect to QIIs filing on Schedule 13G, the SEC proposes:

- *For initial filings when beneficial ownership exceeds 5%:* the current deadline of 45 days after calendar year-end is proposed to be shortened to five business days after month-end;
- *For amendments upon exceeding 10% beneficial ownership or a 5% increase or decrease in beneficial ownership:* the current deadline of 10 days after month-end is proposed to be shortened to five days after the event; and
- *For other amendments:* the current deadline of 45 days after calendar year-end in which any change occurred is proposed to be shortened and modified to five business days after month-end in which a material change occurred.

in individual companies) with the need to protect investors' intellectual property and proprietary trading strategies.

The SEC's economic analysis of the proposal recognizes that more frequent filings with accelerated deadlines may negatively impact some filers, particularly QIIs:

> First, more timely filings may reveal a fund's proprietary information or trading strategies to other market participants, thus allowing those participants to free ride by copying the fund's strategies without incurring a cost to research, identify and devise profitable strategies. Funds typically need to expend considerable resources to research and identify promising investments, and profits from the research take time to accrue. For example, it is estimated that it could take 12 to 18 months for mutual funds to profit after the date a newly acquired stock is first added to a fund's portfolio. Therefore, more timely disclosure would provide free-riding opportunities for other investors to mimic or reverse engineer a fund's strategy, which could ultimately diminish a fund's return. Second, more timely disclosure could increase the risk that funds would be front run by outside investors. Specifically, more timely disclosure could potentially allow professional investors to better understand a fund's strategies and anticipate trades of the fund. Therefore, those professional investors may attempt to trade ahead of the funds to capture the temporary impact on prices of traded securities. As a result, funds could see an increase in trading costs and a decrease in returns.[6]

The SEC's economic analysis goes on to say that:

> The accelerated deadline under the proposed amendments could reveal valuable information about a fund's investment strategies, facilitate free riding and front running behaviors, and therefore potentially reduce a fund's returns and harm fund shareholders. In the long run, the proposed accelerated disclosure requirements could reduce incentives for funds to collect and process information, leading to market inefficiency.[7]

We agree, and we appreciate that the SEC recognizes that these risks exist. We emphatically disagree, however, with the SEC's ultimate conclusion. Noting that "13G filings are different from portfolio disclosures such as Form N-Q or Form 13F" in that they "do not have a set frequency and do not require a disclosure of a fund's entire portfolio," the SEC concludes that 13G filings "are unlikely to provide information with the level of precision and predictability needed for free riding or front running purposes" and "the risks of increased free riding and front running as a result of the proposed amendments are likely to be low."[8] We believe the opposite to be true – that these risks are in fact quite significant.

The release of holdings data does not need to be routine in frequency or portfolio-wide to be damaging. In fact, idiosyncratic public reporting on large holdings is potentially more damaging to

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[6] Proposing Release, 87 Fed. Reg. at 13885-86 (footnotes omitted).

[7] Id. at 13886.

[8] Id.

investment returns. When constructing a portfolio, our portfolio managers consider a security's weighting in the portfolio relative to appropriate indices, with the weightings of individual stocks driven by company-specific fundamental analysis, including valuation levels, a company's growth prospects, its ESG profile, and other fundamentals and risk factors affecting the stock. As a result, position size ultimately reflects the portfolio manager's opinion as to the strength of the investment case.

Many T. Rowe Price strategies have been able to generate outperformance over long stretches of time.[9] That outperformance can be a function of a relatively small number of positions established with strong conviction. Releasing information critical to understanding which investment positions are borne of our strongest convictions has an extremely high likelihood of facilitating free riding and front running behaviors, reducing a fund's returns, and harming fund shareholders.

The SEC dismisses these concerns rather lightly, arguing instead that "timely reporting of value-relevant [13G] information would facilitate price discovery and reduce information asymmetry and mispricing in the market, benefiting investors and other market participants."[10] We have two immediate reactions. First, it is worth noting that the "value-relevant" information in our 13G filings consists entirely of the fact that we have either accumulated or reduced a significant position. Nothing in the filing adds any material information about the company or the holdings of anyone seeking to control or influence management; the only relevant information is that we, as a QII, own a stake in the company. Second, the SEC does not address *which* investors stand to benefit from the release of that information, and why it would be appropriate for *those* investors to benefit rather than the 13G filer, which itself is an investor in the market equally deserving of SEC protection. Experience and common sense tell us that it won't be retail or long-term investors. Instead, as is often the case, sophisticated short-term professional investors will find ways to generate profits from the temporary impact on securities prices generated by the accelerated disclosure of 13G filings data.

We are also concerned that frequent disclosure cycles could be more broadly disruptive to trading. Institutional investors will have a clear incentive to shift the timing of any trades that reveal proprietary insights about their investments. Since it can take a significant amount of time to build or exit a position large enough to warrant reporting on Schedule 13G, a predictable outcome of the proposed rule, if adopted, is that there would be additional trading and volatility in certain issuers just after the reporting deadline each month, as institutional investors begin the process of accumulating or reducing positions, followed by reduced liquidity leading up to the reporting deadine, as they concluded that trading. In other words, institutional investors would seek to protect their clients' interests by avoiding trading over the filing deadlines, when they might have to make a public disclosure while still in the process of executing the trade.

The current 13G reporting regime appropriately balances these considerations, and we do not think there is a compelling need for more frequent 13G disclosures. If the SEC disagrees, we urge it to at

[9] *See* https://www.troweprice.com/personal-investing/about/why-t-rowe-price.html and https://www.troweprice.com/personal-investing/resources/insights/in-a-world-uncertainty-reliable-retirement-outcomes-matter.html.

[10] Id. at 13882.

least take a more measured approach. Recognizing the differences between 13G and 13D filers,[11] the SEC might consider more frequent filings with deadlines more appropriate to protect the filers. A quarterly 13G reporting cycle for QIIs with at least a 30-day period before the filing deadline would be much less likely to have negative impacts on the market and investors that we describe above.

Expanding the Definition of a "Group"

The SEC proposes a number of changes related to when persons are deemed to be acting as a "group." We understand the SEC's intent to address coordinated circumvention (abusive situations where multiple investors collectively seek to change or influence control without making the requisite filings) and the potential for insider trading (where a large shareholder tips another person regarding the large holder's impending Schedule 13D filing obligation). But we, like many other commenters, are concerned that the proposed changes go well beyond addressing these situations and leave advisers at risk of inadvertently forming a group when engaging in legitimate and ordinary business.

We are particularly concerned with the removal of the condition of an express or implied agreement and the suggestion that any "relationship," "arrangement," or "concerted actions" between two or more persons may be sufficient to find the existence of a group. We agree with the extensive comments in the ICI's letter addressing these proposed changes, including that they would create significant uncertainty and have a deeply chilling effect on legitimate actions by industry participants fearful of inadvertently forming a group.

We join the ICI, the IAA, and other commenters in urging the SEC to narrow and clarify the definition of a group. We share their concern that the SEC's effort to curtail a narrow set of communications that are of concern may instead result in eliminating constructive and clearly beneficial types of investor collaboration.

Impact on Activist Investing

Although our perspective is primarily that of a 13G filer, we have serious concerns about the dampening effect that the proposed rule would have, by design, on shareholder activism in the U.S. market.

As a preliminary matter, we note that the SEC seems to have a misplaced focus on the interests of the incremental selling shareholder of a company that may soon become the subject of activism. Commissioner Peirce discusses this focus on the selling shareholder in her dissenting remarks:

> Presuming that stock prices generally rise when a Schedule 13D is filed, this theory of investor harm posits that a shareholder who sells during the ten-day window would be harmed by not knowing that someone else had acquired a large stake in the company; if the Schedule 13D had been filed, she might have sold at a higher price or re-evaluated whether to sell at all. The Commission invents investor harm

[11] ICI's comment letter includes a discussion of the legislative and administrative history of the distinctions between the two regimes, as well as the critical distinctions between QIIs that file on Schedule 13G and other non-control investors. We agree with the ICI that the rationale for these distinctions is as valid today as it has been for the past half century.

> and unduly paints the selling shareholder as a victim; she chose to transact at the prevailing market price on the date she sought liquidity.[12]

If the SEC is to prioritize one set of investors over another, the interests of long-term investors who choose to remain invested in the company should be paramount.

Judging by early reaction to the proposal, found both in market commentary and comments filed ahead of the deadline, long-term investors share our concerns. For example, one endowment manager notes that the proposal appears "based on the assumption that the early disclosure of shareholder positions will make markets more efficient [but] there are convincing reasons to expect that these changes in disclosure rules will have the opposite effect," inducing front-running, allowing companies to employ poison pills against activists, and making productive engagement between shareholders and management more difficult.[13]

We have observed activism over many years, and we agree that all long-term market participants have an interest in preserving the important corrective mechanism that activism serves. That does not mean that we always agree with activist investors. About half the time, we agree with the investor's case, and the other half we take management's side. Regardless of the specifics of each case, however, it is clear to us that U.S. investors would be worse off without the presence of engaged investors incentivized to commit significant resources and time toward the goal of improving individual companies. This is a particularly important dynamic in the U.S. markets, given our relatively weak shareholder rights profile and our minimal listing standards with regard to corporate governance. Simply put, intervention by activist investors has become a critical countervailing force for company boards that cannot be reached by other means.

In our view, the SEC has provided neither sufficient justification nor a rational public policy objective for the intentional suppression of activist investing strategies. We expect that the SEC will receive many more comments along these lines, and we hope that it takes into account the breadth of the comments from professional market participants, like T. Rowe Price, who are not activist investors but represent the interests of the long-term investing public.

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[12] *Dissenting Statement on Proposed Modernization of Beneficial Ownership Reporting*, Commissioner Hester Peirce (Feb. 10, 2022), available at https://www.sec.gov/news/statement/peirce-13d-20220210.

[13] Comments by Allison K. Thacker, President and Chief Investment Officer, Rice Management Company, Treasurer, William Marsh Rice University, available at https://www.sec.gov/comments/s7-06-22/s70622-20120779-272959.pdf (March 21, 2022).

We thank the SEC for its consideration of our perspective. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

/s/
Donna F. Anderson
Head of Corporate Governance

/s/
Marc Wyatt
Head of Global Trading

/s/
Bob Grohowski
Head of Legislative & Regulatory Affairs