DODGE & COX®

April 11, 2021

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Submitted Electronically

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

Dear Ms. Countryman:

Dodge & Cox respectfully submits this letter in response to a request by the U.S. Securities and Exchange Commission (the "SEC" or "Commission") for comments regarding the above-referenced release (the "Proposal").[1] The Proposal would, among other things, accelerate the filing deadlines for Schedule 13D and 13G filings, expand beneficial-ownership reporting obligations, and alter the standards for what activities may be deemed to constitute the formation of a control group subject to beneficial-ownership reporting obligations.

Dodge & Cox is one of the longest-standing professional investment management firms in the United States. We are a fundamental value-oriented active manager known for our thorough independent research. We serve as investment adviser to the Dodge & Cox Funds and numerous separately managed accounts. As of March 31, 2022, our total assets under management exceeded $370 billion. We often control more than five percent of an issuer and file 13G reports as a Qualified Institutional Investor (QII). The Dodge & Cox Funds, which have more than three million direct and indirect investors, are no-load mutual funds consisting of seven series: Dodge & Cox Stock Fund, Dodge & Cox Global Stock Fund, Dodge & Cox International Stock Fund, Dodge & Cox Emerging Markets Stock Fund, Dodge & Cox Balanced Fund, Dodge & Cox Income Fund and Dodge & Cox Global Bond Fund (each a "Fund," and collectively, the "Funds").

We typically invest with a three- to five-year investment horizon, anticipating that it may take several years for management to implement strategies and initiatives that ultimately increase the company's value or for a company to overcome current challenges that have the short-term effect

[1] Modernization of Beneficial Ownership Reporting, Release Nos. 33-11030 and 34-94211 (Feb. 10, 2022); 87 Fed. Reg. 13846 (March 10, 2022) (the "Proposal").

of depressing its price. We are an active, but not an activist, manager. Rather than seeking to exercise control of an issuer, we prefer to use reason and analysis to persuade management to act in the best interest of shareholders.

Dodge & Cox is a member of the Investment Company Institute (the "ICI"). Except to the extent the views expressed in this letter differ from the comprehensive comment letter submitted by the ICI on April 7, 2022, we support the comments and recommendations set forth in the ICI's comment letter. In this letter, we comment on elements of the Proposal most relevant to us and where we believe our perspective as an active manager of large and small mutual funds and separate accounts may be of interest to the Commission.

For the reasons discussed below, Dodge & Cox does not support the Commission's proposal to increase the frequency of Schedule 13D and 13G filings and accelerate related filing deadlines. In addition, we strongly disagree with the Commission's proposal regarding the treatment of shareholders as a "group" for purposes of Sections 13(d) and 13(g). Specifically, we do not support the removal of the word "agree" from Rule 13d-5 and object to the addition of Rule 13d-5(b)(1), which assumes formation of a group when one shareholder discloses to another that it intends to file a Schedule 13D.

The Commission refers to the need to strike an appropriate balance between providing adequate disclosures to investors and not unduly burdening those engaging in change of control transactions. We believe that another important consideration to be weighed is the fact that such disclosures involve the taking of valuable intellectual capital and proprietary information from professional investment managers. Earlier and more frequent reporting means that proprietary information of even greater value would be taken from both activist and active managers and given to the marketplace, allowing free riders and predatory traders to profit from managers' work product to the detriment of their clients.

The taking of our proprietary trading information through earlier and more frequent reporting strikes at the heart of our business. Clients hire us for the strength of our analytical and investment capabilities. We often spend months thoroughly researching and developing an investment thesis about an issuer. We frequently trade large blocks of securities, and because we are price sensitive investors it can take sometimes take weeks or months to fully implement an investment decision. Earlier reporting deadlines and more frequent reporting will provide greater opportunities for front-running and other predatory trading by market participants looking for a free ride. Trading by free riders often drives the price of a security up (when we are trying to buy a block) or down (when we are trying to sell a block) and results in direct harm to our clients and Fund shareholders.[2]

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[2] Several academic studies have found a negative relationship between disclosure frequency by mutual funds and future performance. *See e.g.*, Agarwal, Vikas, et al. "Mandatory Portfolio Disclosure, Stock Liquidity, and Mutual Fund Performance." *The Journal of Finance*, vol. 70, no. 6, 2015, pp. 2733–76, available at http://www.jstor.org/stable/43611148; Meyers, Mary Margaret and Poterba, James M. and Poterba, James M. and Shackelford, Douglas A. and Shoven, John B., *Copycat Funds: Information Disclosure Regulation and the Returns to Active Management in the Mutual Fund Industry* (October 2001), available at SSRN: https://ssrn.com/abstract=293617; Weili Ge

Although we are not activist investors, we believe the Proposal will affect 13D filers even more profoundly. The Commission acknowledges that the shortening of the 13D filing deadline could have a chilling effect on a shareholder's ability and incentive to effect changes at companies that may benefit all shareholders but states that it does not believe that the Proposal will disrupt the balance between timely dissemination of material information and the creation of undue burdens in the change of control context. We respectfully disagree. As discussed above, earlier disclosure of trading activity involves the taking of valuable proprietary information which will severely diminish the financial incentives that drive activist managers to invest the time and resources needed to engage in costly and risky proxy fights. We believe that the Proposal will harm markets and investors by reducing the current incentives for 13D filers to influence company management's behavior when management is seen as acting in a manner contrary to the best interests of shareholders. In addition, we believe that the likely chilling effect that the Proposal will have on shareholder actions by activist investors will also indirectly result in further harm to markets and investors by reducing incentives for company management to regularly engage with the legitimate concerns of 13G and other non-activist shareholders, including active investment managers, that relate to increasing the long-term value of the company. This chilling effect would harm markets by undermining the beneficial role that active investment managers have been shown to play in contributing to more efficient and accurate price discovery in public securities markets.[3]

The Commission seeks to justify the taking of asset managers' work product with vague assertions that (i) information asymmetries could harm investors and (ii) technological advances have made the operational aspects of reporting easier. We submit that information asymmetries created by the research and analytical skills of a market participant are not a problem in need of a solution. We do not believe it is the proper role of the Commission to try to level the playing field by forcing certain market participants to share their intellectual capital and work product with other market participants unless the Commission can identify specific harm to markets and/or investors, which it has not done. Requiring active and activist managers to divulge their holdings and trading activity through earlier and more frequent disclosure will reduce their incentive to discover and advocate for the fundamental drivers of a company's value. Thus, we believe that the Commission's focus on "correcting" information asymmetries will actually impair market efficiency and price discovery by untethering prices from real world considerations, leaving markets more susceptible to volatility driven by speculative investing.

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and Lu Zheng, *The Frequency of Mutual Fund Portfolio Disclosure*, Ge, (March 2006), available at SSRN: https://ssrn.com/abstract=557186.

[3] Multiple academic studies have found that active investment managers provide an overall benefit to markets by positively contributing to more efficient and more accurate price discovery. *See e.g.*, Wermers, Russell R., *Active Investing and the Efficiency of Security Markets* (December 15, 2019), The Journal of Investment Management, 2020 (finding that active investment management simultaneously generates value-added for investors and makes public security markets more efficient), available at SSRN: https://ssrn.com/abstract=3353956; Libson, Adi and Parchomovsky, Gideon, *Reversing the Fortunes of Active Funds* (2021), Texas Law Review, Vol. 99, p. 581, 2021, U of Penn, Inst. for Law & Econ Research Paper No. 20-04, (finding that: (i) active funds improve managerial performance not only in their portfolio companies, but also in the market at large; and (ii) because the benefits produced by active funds inure to all investors, active funds capture only a small portion of the value they produce), available at SSRN: https://ssrn.com/abstract=3517849.

With respect to the technological advances hinted at by the Commission, the release notes that such advances have "increased the market's demand for more timely corporate disclosure and the ability of companies to capture, process and disseminate this information." While we agree that companies issuing shares to the public and listing those share on public securities markets should be subject to robust disclosure requirements and that certain technological advances may justify accelerated filing requirements for issuers, we do not believe the same justification applies to investors. Further, as noted in the ICI comment letter, there have not been significant technological advances to systems that market participants rely on to prepare Schedules 13D and 13G. For example, information about issuers' outstanding shares is not readily available in a public database. Even if technological advances making it possible to prepare 13D and 13G filings on an accelerated basis were to develop in the future, such advances would not in and of themselves justify the harm to clients of active and activist investors that would result from the Proposal.

The proposed changes to the concept of a "group" are even more troubling as they create significant uncertainty with respect to the circumstances under which a group will be deemed to exist, and the proposed exemptions do not provide sufficient clarity.

We sometimes seek to test our investment theses with peers that we respect, and we appreciate hearing their opinions about management and various aspects of an issuer's business. As with many intellectual endeavors, engaging with knowledgeable individuals can lead to greater insights, reveal weaknesses in one's analysis and spark creative thinking. In addition, to the extent an activist investor may be considering or engaging in a proxy contest, it is important that we be able to speak with them to conduct our own independent assessment of their position. It should not be assumed that we have adopted their intention to change or influence control of the issuer simply by gathering information to form our own opinion, which may or may not align with the activist's. We note that our discussions with activist investors have not involved the sharing of investment or trading strategies; nor have we engaged in such discussions with the intent to act in concert with other shareholders. We value our interactions with other professional managers, which include Schedule 13G and 13D filers, and believe that, to the extent these interactions help uncover and predict the drivers of a company's value, markets ultimately benefit.

Under the current group standard, we are very cautious when communicating with other shareholders to avoid any suggestion that we wish to act in concert with them to change or influence control of an issuer. The Proposal will create an environment where there can be no certainty unless all communication with other shareholders is cut off because like-minded shareholders will be susceptible to a group claim from issuers, the SEC and plaintiff's lawyers. The exemption for passive investors does not provide sufficient clarity as we may not know the intent of a shareholder when we speak with them or their intent may change. As a result, the Proposal will chill discussions among professional investors and make it more difficult for active managers to persuade management to take actions that benefit all shareholders. This is unfortunate as the current balance of power between company management and shareholders already clearly rests in management's favor. The Proposal, along with the Commission's proposed rule 10B-1, would tilt the balance of power even more strongly in favor of company management. We believe that the result of these combined proposals will be entrenched management and weaker corporate governance, which will hurt investors and confidence in our securities markets.

We find it perplexing that the Commission is seeking to weaken shareholder influence at the same time it is proposing additional disclosure requirements with respect to climate-related information. On the one hand, the Commission seems to want to enhance the ability of shareholders to analyze the financial impact of climate-related risks on issuers and the economy as a whole. On the other hand, it is imposing requirements on shareholders that make it more difficult to persuade management to mitigate those risks. The Commission should consider the important role played by active and activist managers in price discovery, allocation of capital to productive areas of the economy and, increasingly, pressuring management to address environmental, social and governance concerns. Without their contributions, securities markets are likely to become more speculative and volatile, which we assume is not the outcome desired by the Commission.

For the reasons discussed above, we strongly recommend that the Commission abandon the aspects of Proposal addressed herein. In particular, we recommend that the Commission retain the current standards relating to group formation. In the event the Commission determines to move forward with revisions to Schedule 13D and 13G filing deadlines, we recommend that the Commission distinguish between Schedule 13D and 13G filers and adopt the approach proposed in the ICI comment letter.

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We appreciate the opportunity to comment on the Proposal. If you have any questions regarding our comment letter or would like additional information, please contact me at [redacted] or Roberta R. Kameda, General Counsel of Dodge & Cox, at [redacted].

Sincerely,

Charles F. Pohl
Chairman