

April 11, 2022

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

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

Dear Ms. Countryman:

This letter is submitted on behalf of Business Roundtable, an organization whose members lead America's largest companies, employing over 20 million workers. Their companies' total value, over \$20 trillion, accounts for half of the value of all publicly traded companies in the United States. They spend and invest over \$7 trillion a year, helping sustain and grow tens of thousands of communities and millions of medium- and small-sized businesses.

We appreciate the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "Commission" or "SEC") on February 10, 2022, that would, if adopted, modernize the beneficial ownership reporting requirements (the "Proposals").¹ The Proposals would, among other things, shorten the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G, address the formation of groups under the Securities Exchange Act of 1934 (the "Exchange Act"), and deem holders of certain cash-settled derivative securities as beneficial owners of the reference equity securities.

Business Roundtable supports the Commission's efforts to modernize the current beneficial ownership reporting requirements, which currently can result in a lag time in reporting large accumulations of securities that can disadvantage investors and other market participants. We believe the Proposals, if adopted, will significantly improve transparency and are appropriate in light of the many changes in technology and otherwise since the beneficial ownership reporting requirements were first put in place over 50 years ago. We note in particular two aspects of the Proposal that Business Roundtable views as particularly important to the SEC's efforts.

THE SEC'S PROPOSALS

The Commission has proposed to revise the filing deadlines for Schedule 13Ds to decrease the initial filing deadline from ten to five calendar days and the deadline for amendments from

¹ Modernization of Beneficial Ownership Reporting, Exchange Act Release No. 34-94211 (Feb. 10, 2022), <https://www.sec.gov/rules/proposed/2022/33-11030.pdf> [hereinafter the *Proposals*].

“promptly” to one business day following a material change. Similar changes to the filing deadlines for Schedules 13G are also proposed.

Business Roundtable strongly supports the proposed accelerated timetable to report on Schedule 13D initial acquisitions of greater than 5% of an issuer’s securities as well as material changes in the information initially reported by greater than 5% shareholders. In this regard, we agree with the concerns referenced in the Proposals that “material information about potential change of control transactions is not being disseminated to the public in a manner that would be considered timely in today’s financial markets.”² As the SEC notes in the Proposals, the original filing deadlines reflected a balancing of the need for adequate disclosures to investors against the burden on reporting persons. With changes in technology and the markets since the beneficial ownership reporting requirements were put in place in 1968, the proposed decrease in reporting time is both possible without undue burden from a practical standpoint and necessary to alert investors and other market participants of large accumulations of securities as well as to material changes with regard to the holdings of issuers’ largest shareholders.

Another aspect of the Proposals that Business Roundtable would like to address in particular is the formation of “groups” for purposes of beneficial ownership reporting and, in particular whether an explicit “agreement” is a necessary element of group formation. As the SEC notes in the Proposals, whether a group exists is a facts and circumstances analysis and should not hinge on whether an explicit “agreement” exists. Rather, the relevant inquiry should be whether two or more persons are in fact acting together for purposes of acquiring, holding or disposing of an issuer’s securities – a necessarily facts and circumstances inquiry. Under the current formulation of the rule, investors may be able to delay reporting based on form over substance – whether an explicit agreement has been entered into – notwithstanding that the investors are in fact acting in concert. For this reason, Business Roundtable supports the proposed rule change to clarify that formation of a group does not depend solely on the presence of an express agreement.

CONCLUSION

For these and other reasons, Business Roundtable believes that the Proposals are both needed and appropriate. Business Roundtable therefore supports the Proposals and urges the Commission to adopt the Proposals.

Business Roundtable appreciates the opportunity to provide our input during this process. We would be happy to discuss these comments or any other matters you believe would be helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of Business Roundtable, at mghazal@brt.org or 202-496-3268.

² *Id* at page 15.