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,

I write briefly about a sub-sub-issue raised by this proposal and the comments to date on it. I write mainly to communicate here with the public, especially academics, who seem to misunderstand the institutional autonomy the agency does and does not have to conduct original research. Put simply the Paperwork Reduction Act (codified at 44 U.S.C. §§ 3501-3521) (**PRA**) commonly makes it difficult or impossible for the Commission to engage in the type of advance data-gathering or even data-solicitation that others have advocated.

Since 1995, that law has barred "collections of information" by a wide range of agencies, including all independent agencies such as the SEC, unless specified procedures are followed, beyond those required of rulemakings. These additional procedures ordinarily take at least 90 days and more typically six to nine months or even longer, particularly if the data to be collected is of private value.

"Collections of information" is defined much more broadly in the PRA than that phrase might suggest. It includes even "**soliciting**" the public for facts, "**regardless of form**" if the solicitation calls for "answers to identical questions posed to … ten or more persons…" Voluntarily provided information is not generally exempt, nor are collections that would impose minimal burdens on respondents. Simple, conventional surveys of cost estimates for a proposed rule are typically covered. Partnerships between agencies and academics fall into a gray area under the law, about which a legally cautious answer is they should often be treated as covered.

The result is that agencies commonly ask about publicly available data, or request data only in general and unstructured questions. The law does in principle permit the eventual collection of data, after the subject agency goes through a time- and resource-consuming process, which due to the potential need for a hearing, has no predictable timetable, and ultimately subjects the decision to another agency, which itself is subject to budget and staff resource constraints, and is permitted only to approve data gathering projects of three years or less. These limits apply to both new regulations, as well as to de- or re-regulatory changes, and should be considered by anyone who thinks that regulation needs continuous updating to remain optimal.

Some commentators may read this and think, "the agency should just go through that process" and take the time and resources to do that before engaging in regulatory change.

In theory, if agencies had sufficient dedicated funding and political shelter to be able to sustain multi-year rule-making projects, that response might be reasonable. Even then, for any significant financial regulatory change, for reasons I have elaborated upon at length,[1] *ex ante* collection of data is far less likely to generate reliable inferences about causes and effects and costs and benefits than well-designed retrospective studies of rule changes, which could be linked to sunsets. Even with retrospectives, other challenges to ordinary science

[1] Towards Better Cost-Benefit Analysis: An Essay on Regulatory Management, 78 Law and Contemporary Problems 1 (2015); Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications, 124 Yale Law Journal 882 (2014-2015).

(e.g., random treatments) mean the bottom line judgments agencies are required to exercise will rarely approach the theoretical vision some commentators seem to have in mind.

In reality, the SEC is subject to annual budget appropriations, is subject to a significant risk of a bi-annual swing in political oversight, and has been commonly short-funded in significant ways that have reduced its regulatory and enforcement capacity – again, not only to regulate, but to re- or de-regulate. For example, the Division of Corporation's staff was reduced by more than 20% in the five years prior to 2022, during which the number of listed companies rose significantly, nearly doubling the ratio of listed companies to full-time equivalent staff from 9 to 15. As a result, the Commission has no practical ability to commit to long-term retrospective rulemaking projects of the very kind that might produce the kinds of reliable data-based judgments that many commentators believe it can already produce.

Yet it has a statutory mandate to protect investors and serve the public interest as best it can amid changing circumstances and market conditions. No element of its organic statutes, or any part of administrative law, gives it an excuse for prolonged inaction based on the limits on its data-gathering ability, on the practical implications of the budget and interagency processes to which it is subject, or the common mismatch between the questions raised by financial regulation and the ability of social science to answer them. Qualitative, reasoned judgments based on experience and its expertise – as augmented by whatever information is added to a proposed rule's comment file -- are the only things it can use in a wide range of rulemaking settings.

In sum, commentators who think the Commission should do more to obtain and analyze probative data not already in the public domain, in advance of rulemaking, should direct their complaints to Congress.

Very truly yours,

John Coates

(For identification: John F. Cogan Professor of Law and Economics, Harvard Law School)