



February 27, 2023

The Honorable C.T. Wilson
Chairman, House Economic Matters Committee
Room 231, House Office Building
Annapolis, Maryland 21401

RE: House Bill 776
Commercial Law - Maryland Antitrust Act –
Premerger Notification Requirement and Remedies
UNFAVORABLE

Dear Chairman Wilson and Members of the House Economic Matters Committee:

On behalf of T. Rowe Price Group, Inc., I am writing to express our opposition to House Bill 776.

T. Rowe Price is a global asset manager, proudly headquartered in Baltimore since our founding in 1937, with \$1.35 trillion in assets under management as of January 31, 2023. T. Rowe Price provides a broad array of mutual funds, private funds, subadvisory services, and separate account management for individual and institutional investors, retirement plans, and financial intermediaries.

House Bill 776 would require any person acquiring voting securities of another person (the target) to file a pre-merger notification if, after the acquisition, the acquiring person would own more than \$8 million of the target's voting securities and other assets. The only jurisdictional limit would be that the acquiring person is subject to the jurisdiction of a Maryland court. The required notice must be filed 60 days "before the closing of the acquisition."

T. Rowe Price is opposed to House Bill 776 as drafted. We believe that this bill is intended to provide the Attorney General's office with information about transactions involving Maryland companies that either result in or lead to a change in control that might raise antitrust concerns under Maryland law. Essentially, the bill appears intended to provide a state-level reporting system similar to the federal reports filed with the Federal Trade Commission (FTC) pursuant to the Hart-Scott-Rodino (HSR) Act.

The notice and reporting requirements in the HSR Act are designed primarily to enable U.S. federal antitrust authorities to identify potential acquisitions that would violate Section 7 of the Clayton Act. This section, however, does not apply to purchases of stock solely for investment. There are exceptions that apply broadly to institutional investors and specifically to "investment only" transactions – ordinary course securities transactions made solely for the purpose of investment. These exceptions are critical for asset managers like T. Rowe Price.

T. Rowe Price invests capital on behalf of T. Rowe Price clients – millions of everyday Americans, including many Maryland residents, saving for their most important financial goals. Our asset management products and services offer these investors professional management, diversification, and exposure to a broad array of assets and investment strategies at a reasonable cost.

A practical example may help explain both the scale and the substance of T. Rowe Price's business. The T. Rowe Price Global Stock Fund¹ is one of approximately 180 funds offered by T. Rowe Price to U.S. retail investors. This fund seeks long-term growth of capital through investments primarily in the common stocks of established companies. As of December 31, 2022, this fund had total investments of more than \$4.8 billion. The vast bulk of the fund's portfolio (almost 98 percent) is invested in voting securities (stock) issued by 73 companies. And because of its popularity and size, each of these investments is large – 70 of these 73 investments exceed \$8 million in value.² Indeed, across all funds and client portfolios managed by T. Rowe Price, we have more than 1,000 positions that exceed \$8 million in value.

Although these are large holdings of voting securities, they are not the types of investments that have "closing dates" with respect to which a filing could be made in advance. Routine investments are made on a daily basis, purely for investment purposes, and never for control. Portfolio managers buy and sell securities as fiduciaries, managing the collective investments of millions of Americans. We have never in our 86-year history made an HSR filing on behalf of any fund or client account. This is less a function of the size of the holdings, and more a function of the appropriate application of the institutional investor and investment-only exceptions in the HSR rules, and the recognition at the federal level that these are not the types of transactions intended to be subject to antitrust review.

It is difficult to estimate the number of filings House Bill 776 would generate, if adopted as written. There is no limitation on the types of acquisitions that would trigger a filing, so presumably any investment decision to initiate or add to a position, any reinvestment of dividends, any receipt of additional voting securities as a result of a corporate action, etc., would qualify. As noted above, we have more than 1,000 positions worth more than \$8 million. It would not be hyperbolic to suggest that there would be more than 10,000 transactions annually that would trigger a filing under a literal interpretation of the bill.

A more reasonable interpretation of the bill's "as a result of" language might suggest that only transactions that *cause* the level of ownership to *cross* the \$8 million threshold trigger a filing. Such an interpretation would lessen the number of filings but would continue to result in undue burden on asset managers like T. Rowe Price. In addition, it would still raise a separate significant issue. T. Rowe Price is an "active manager," meaning that we make investment decisions based on factors that include proprietary research and analysis. Requiring filings that indicate when we have initiated a new position or increased a position in what was previously a small holding would convey commercially sensitive information to the marketplace and facilitate predatory trading called "front running" and "free riding."³ Regulators such as the Securities and Exchange Commission have long recognized the risks of front running and free riding, and

¹ The Fact Sheet for this fund is available at <https://www.troweprice.com/literature/public/country/us/language/en/literature-type/quarterly-factsheet/sub-type/mf-single-class?productCode=GLS¤cy=USD>.

² This information can be found in the fund's quarterly portfolio holdings disclosure, available at <https://individual.troweprice.com/staticFiles/gcFiles/pdf/phqlsq4.pdf>.

³ For additional detail on T. Rowe Price's active management style and the potential harms from predatory front-running and free-riding, see our April 11, 2022 comment letter to the Securities and Exchange Commission, available at <https://www.sec.gov/comments/s7-06-22/s70622-20123410-279671.pdf>.

sought to require reporting of portfolio holdings and investment activity only when the disclosure of information outweighs these risks.

Regardless of the interpretation of the bill's language and the number of filings, the idea that an asset manager like T. Rowe Price would have to wait 60 days for state government approval to execute an investment idea is simply unthinkable. In response to a proposal to amend the HSR rules, we have explained the disruption to portfolio management that even a modest increase in the number of HSR filings would cause, given the 30-day investment timeout associated with those filings.⁴ We cannot imagine how any asset manager could comply with the bill as written.

The burdens of these filings would not visit solely upon us as an asset manager. Of course, to make these thousands of filings, T. Rowe Price would have to implement the appropriate investment monitoring processes, prepare and review the reports, and make the filings. The Attorney General's office, in turn, would have to deploy appropriate technical and human resources to be able to receive the filings, maintain appropriate levels of confidentiality, review the information, and render their decisions.

None of these costs and burdens are justified – not on the asset managers making the filings and not on the Attorney General's office receiving the filings – because the reports would provide literally no meaningful information for antitrust regulators. Returning to the example of the Growth Stock Fund, you will see that, as of December 31, 2022, that fund held almost 920,000 shares of Apple stock, valued at nearly \$120 million. Interpreting the bill strictly, the fund would be required to make a filing with the Attorney General's office if it bought more Apple stock by reinvesting Apple's quarterly dividend,⁵ even though that type of transaction raises no conceivable antitrust concerns. This is obviously not what the bill was intended to address.

We understand there is significant and widespread opposition to House Bill 776. We are not recommending that the General Assembly move ahead with this bill, but if it does, it is imperative to make clear that it is intended to apply solely to transactions that, by crossing an ownership threshold, suggest that the acquiring person intends to control the target. The bill must include workable institutional investor and investment-only exceptions, like those in the HSR rules at the federal level.

Without these changes, we oppose House Bill 776.

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⁴ See our February 1, 2021 comment letter to the Federal Trade Commission, available at <https://www.regulations.gov/comment/FTC-2020-0085-0015>.

⁵ The Growth Stock Fund, like all T. Rowe Price mutual funds and roughly one quarter of all mutual funds offered in the United States, is domiciled as a Maryland corporation. It would be a person, subject to the jurisdiction of a Maryland court, that acquired voting securities of another person (Apple), resulting in total ownership of more than \$8 million in voting securities.

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We were unable to submit written testimony in time for the bill hearing for Senate Bill 657, which is the crossfile of House Bill 776. Therefore, we are sending a copy of this letter with a cover letter to each member of the Senate Judicial Proceedings Committee so that our position is clear to both Houses.

Pursuant to our comments above, we respectfully request an unfavorable report of House Bill 776.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Grohowski", is positioned below the "Sincerely," text.

Robert Grohowski
Vice President and Managing Legal Counsel
Head of Legislative & Regulatory Affairs

cc: Members of the Senate Judicial Proceedings Committee
Bryson F. Popham