



March 31, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission (SEC)
100 F Street, N.E.
Washington, DC 20549

**RE: File No. S7-21-21; Share Repurchase Disclosure Modernization
Comments from Niko Lusiani, Director, Roosevelt Institute**

Dear Ms. Countryman,

At the Roosevelt Institute's think tank, I research ways to foster a dynamic, innovative private sector that works in the service of a thriving equitable economy for all. One central line of investigation in my work focuses on capital formation and allocation strategies, and in particular the share repurchase activity of publicly listed companies. In my previous work, I also represented shareholders interested in obtaining better information about how share repurchase activity affects innovation, efficient markets, and long-term value. Much of my research relies on company filings at the SEC, and my work would be impossible without transparency around the size, scope, and timing of open-market share repurchases—or buybacks. I appreciate the opportunity to comment on File No. S7-21-21; Share Repurchase Disclosure Modernization.

To summarize my views: The SEC's proposed amendments to modernize and improve disclosure around share repurchases are welcome measures to help mitigate the harms I describe below by reducing current information asymmetries, boosting firm responsiveness to concerns around the opportunity costs of buybacks, and enhancing vigilance around their use and abuse. The enhanced transparency and real-time data will be particularly useful to researchers like myself, but also to a broader community of analysts, investors, suppliers, journalists, workers, and others.

Harms Stemming from Opaque and Unlimited Share Repurchases

To begin, it's worth restating why this issue is so important to our economy and to my work. The opacity and unlimited nature of open-market share repurchases in the US today harms a fair and innovative economy in four ways.

First, of utmost concern to fostering efficient and healthy markets is that unlimited share repurchases may well be distorting stock prices. Research estimates that 40 percent of share growth in recent years derives from corporations buying their own stock rather than company

fundamentals such as earnings.¹ In fact, buybacks represented the biggest source of demand for US stocks between 2009 and 2018.² Evidence suggests that firms may be using buybacks strategically to meet analyst earnings expectations which they would have missed otherwise.³ These distortions do not augur well for the long-term health of individual firms, the capital markets, or the broader economy.

Second, and relatedly, senior management—compensated in stock and with more detailed inside information—enjoy regulatory loopholes allowing them to manipulate earnings-per-share (EPS) through the timing and scale of buybacks in ways that boost their own personal financial rewards. Recent empirical research shows a statistically significant relationship between buybacks and insider sales, suggesting that insiders are choosing to increase their use of corporate funds to conduct stock buybacks in the same quarters when they are personally profiting from higher share prices.⁴ The potential that senior executives are making decisions about such central capital allocation matters based on their own bottom lines rather than long-term value creates a cloud of uncertainty and doubt which is harmful to fair and efficient capital markets.

Third, innovation, capital expenditure, and human capital development—all cornerstone dimensions of long-term value, capital formation, and growth—are crowded out by opaque, unlimited and tax-privileged share repurchases.⁵ An empirical study finds that repurchases used to push EPS above analyst expectations are accompanied by a 10 percent decrease in capital expenditures and a 3 percent decrease in research and development. The study concludes that managers of US firms are able and willing to trade off investments in innovation and real investment for share repurchases that signal short-term success.⁶ Further, share repurchases enjoy significant tax benefits compared to dividends.⁷ This implicit government subsidy represents forgone revenue that could have been spent on needed public economic and social infrastructure

¹ Roberts, Lance. 2021. “40% of the Bull Market Is Due Solely to Buybacks.” *Seeking Alpha*, October 29, 2021.

<https://seekingalpha.com/article/4463446-40-percent-of-the-bull-market-is-due-solely-to-buybacks>; Garrib, Aidan. 2021. *Global Macro Views and Ideas*. Montreal: Pavilion Global Markets. <https://markethuddle.com/wp-content/uploads/2021/03/Market%20Huddle%20Podcast%20-%20March%2019%202021.pdf>.

² Ponczek, Sarah, and Lu Wang. 2018. “Goldman's Buyback Desk Was Deluged With Orders as Stocks Plunged.” *Bloomberg*, February 14, 2018, sec. Markets. <https://www.bloomberg.com/news/articles/2018-02-14/goldman-s-buyback-desk-was-deluged-with-orders-as-stocks-plunged>;

Authers, John. 2019. “Stock Buybacks Aren’t Bad. They’re a Symptom of a Larger Problem.” *Bloomberg Businessweek*, February 6, 2019, sec. Finance. <https://www.bloomberg.com/news/articles/2019-02-06/stock-buybacks-aren-t-bad-they-re-a-symptom-of-a-larger-problem?sref=gMvqgK3G>.

³ Almeida, Heitor, Vyacheslav Fos , and Mathias Kronlund. 2016. “The Real Effects of Share Repurchases.” *Journal of Financial Economics* 119, no. 1 (January): 168–85. <https://www.sciencedirect.com/science/article/abs/pii/S0304405X15001476?via%3Dihub>.

⁴ Palladino, Lenore. 2019. “Do Corporate Insiders Use Stock Buybacks for Personal Gain?” Roosevelt Institute Working Paper. New York: Roosevelt Institute. https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Corporate-Insiders-use-Stock-Buybacks-for-Personal-Gain_Working-Paper-201910.pdf;

Jackson Jr., Robert J. 2018. “Stock Buybacks and Corporate Cashouts.” (Speech, US Securities and Exchange Commission, Washington, DC, June 11, 2018). <https://www.sec.gov/news/speech/speech-jackson-061118>.

⁵ Turco, Enrico Maria. 2018. “Are Stock Buybacks Crowding out Real Investment? Empirical Evidence from U.S. Firms.” ExSIDE Working Paper No. 37-2021. Dusseldorf: Hans Böckler Foundation. https://www.boeckler.de/pdf/v_2018_10_27_turco.pdf.

⁶ Almeida, Heitor, Vyacheslav Fos , and Mathias Kronlund. 2016. “The Real Effects of Share Repurchases.” *Journal of Financial Economics* 119, no. 1 (January): 168–85. <https://www.sciencedirect.com/science/article/abs/pii/S0304405X15001476?via%3Dihub>.

⁷ Feng, Liang, Kuntara Pukthuanthong, Dolruedee Thiengetham, H. J. Turtle, and Thomas J. Walker. 2013. “The Effects of Cash, Debt, and Insiders on Open Market Share Repurchases” *Journal of Applied Corporate Finance* 25, no. 1 (April): 55–63. <https://doi.org/10.1111/j.1745-6622.2013.12006.x>.

to drive innovation and growth.

Lastly, opaque and unlimited share repurchases in the US today exacerbate economic inequality, itself a drag on economic growth. Publicly listed corporations spent \$6.3 trillion to repurchase their own shares in the decade before the pandemic. This represented on average 100 percent of the after-tax profits of nonfinancial corporations. These firms are set to spend a record \$1 trillion in buybacks this year.⁸ Instead of investing to enhance innovation, productivity, and job creation, these actions inflate equity prices, which disproportionately benefit the top 10 percent of households—who own 89 percent of US stock.⁹ These growing wealth disparities accentuate overall economic inequality, which S&P’s Chief US Economist, economists from the International Monetary Fund, and several others have argued stunts economic growth.¹⁰

Notably, given the lax regulatory environment, the US is by far the global leader in buyback activity, and is the only country that spends more on share repurchases than dividends.¹¹ In this sense, the harms described above from opaque, unjustified, and unlimited buybacks pose distinct competitive disadvantages for US actors operating in a global economy.

Benefits of Modernizing Share Repurchase Disclosures

The SEC’s proposed amendments to modernize and improve disclosure around share repurchases will help to mitigate the harms described above by reducing current information asymmetries, boosting firm responsiveness to concerns around the opportunity costs of buybacks, and enhancing vigilance around their use and abuse. As such, this information will also be of utmost benefit to researchers, analysts, investors, journalists, workers, and others.

First, Proposed Form SR will help protect investors by shining more sunlight on the timing and size of share repurchases, providing a dissuasive effect to reduce potential for market manipulation and abusive insider sales.

⁸ Dailey, Natasha. 2022. “Companies Are On Pace to Buy Back a Record \$1 Trillion in Stock This Year as Russia's War in Ukraine and the Fed's Planned Rate Hikes Rattle Markets.” *Business Insider*, March 15, 2022. <https://markets.businessinsider.com/news/stocks/stock-buybacks-1-trillion-2022-ukraine-war-fed-rate-hikes-2022-3>.

⁹ Kakouris, Rachelle. 2020. “Fed Rally & Default Fears Bring Bifurcation back to Leveraged Loans.” S&P Global, April 30, 2020. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/leveraged-loan-news/fed-rally-default-fears-bring-bifurcation-back-to-leveraged-loans>; Board of Governors Federal Reserve System. 2022. “DFA: Distributional Financial Accounts.” Last updated March 18, 2022. Survey of Consumer Finances and Financial Accounts of the United States. <https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/#quarter:126;series:Corporate%20equities%20and%20mutual%20fund%20shares;demographic:networth:population:1.3.5.7;units:shares>.

¹⁰ Bovino, Beth Ann, Gabriel J. Petek, and John B. Chambers. 2021. *How Increasing Income Inequality is Dampening US Economic Growth, and Possible Ways to Change the Tide*. New York: Standard and Poor’s Rating Services. https://www.spglobal.com/division_assets/images/special-editorial/how-the-advancement-of-black-women-will-build-a-better-economy-for-all/ratingsdirect_28714420_jun-07-2021.pdf; Ostry, Jonathan D., Andrew Berg, and Charalambos G. Tsangarides. 2014. *Redistribution, Inequality, and Growth*. Washington, DC: International Monetary Fund. <https://www.imf.org/external/pubs/ft/sdn/2014/sdn1402.pdf>.

¹¹ Focusing Capital On The Long Term Global (FCLTGlobal). 2020. *The Dangers of Buybacks: Mitigating Common Pitfalls*. Boston: FCLTGlobal. <https://www.fcltglobal.org/wp-content/uploads/The-Dangers-of-Buybacks-FCLTGlobal.pdf>.

Second, the more granular transparency around the specific timing of buybacks offered by Proposed Form SR will help investors, analysts, workers, researchers, and regulators identify repurchases that are more likely to be driven by managerial self-interest rather than value creation. In particular, Proposed Rule SR would enable the SEC to actually determine whether or not companies stay within the safe harbor, which former SEC Chair Mary Jo White explained it was unable to do with current rules.¹²

Third, requiring management to explain—and Boards to assess more carefully—the justification for share repurchases could, if designed right, lead to more productive supervision and debate around the trade-offs and opportunity costs of buybacks. This will allow a broad array of stakeholders to more effectively hold management and Boards accountable for narrow, short-term strategies that spend excess capital on repurchasing shares at the cost of innovation, productivity, and workforce development. In turn, more investment, more innovation, and a workforce ready for the future and treated with dignity and respect would have significant overall economic benefits.

Lastly, to the extent that it nudge issuers away from tax-privileged buybacks and toward dividends as preferred tools for distributing profits to shareholders,¹³ the proposed rule would also benefit the American taxpayer by allowing the government to retrieve more of the revenue currently forgone from these implicit subsidies, and spend this money on needed public economic and social infrastructure to drive innovation and growth.

In these ways, the proposed new rules should lead to a variety of benefits for shareholders, analysts, workers, academics, and regulators—all of whom should be recognized as affected parties. In this sense, beyond investors, the SEC should consider including an expanded and delineated list of these and other beneficiaries of the proposed rules.

It is no surprise then that various distinct communities of practice have voiced support for new SEC rules to enhance transparency of and justification over share repurchases. The Council of Institutional Investors, for example, “advocates robust disclosure about the rationale for buybacks,” argues that “management should disclose how buybacks affect performance metrics” and “supports more rapid disclosure, on par with disclosure of trades by insiders.”¹⁴ Additionally, the organization Focusing Capital on the Long Term (FCLT)—founded by CPP Investments and

¹² See letter to Senator Tammy Baldwin, July 13, 2015,

<https://www.documentcloud.org/documents/2272283-sec-response-to-baldwin07132015.html#document/p1>; “The Commission therefore cannot effectively compare firm repurchase activity (reported by month) against the daily conditions, such as the daily limit on repurchase volume, of the safe harbor.”

¹³ Matheson, Thornton, and Thomas Brosy. 2021. “1% Buyback Tax Could Lead to Higher Dividend Payouts.” *TaxVox: Business Taxes* (blog). Tax Policy Center. December 20, 2021. <https://www.taxpolicycenter.org/taxvox/1-buyback-tax-could-lead-higher-dividend-payouts>.

¹⁴ Council of Institutional Investors (CII). 2019. “CII Statement on Share Buybacks.” Press release, February 5th, 2019.

<https://www.cii.org/feb5sharebuyback>; Council of Institutional Investors. 2022. “Corporate Disclosure.” CII Advocacy Priorities. https://www.cii.org/corporate_disclosure.

McKinsey & Company, and with a wide membership of investors including BlackRock, Fidelity, State Street, and Wellington Management—recently called for stricter disclosure requirements around share repurchases, including timing restrictions, pricing restrictions, volume restrictions, and requiring more timely disclosures of share repurchase activity.¹⁵

Responses to Specific Requests for Comment

With these benefits in mind, I would now like to address a few of the specific requests for comment posed by the SEC.

Proposed Form SR

For the proposed rule to be effective, daily detailed disclosures are absolutely necessary. Simply put, the quality and relevance of this data relies on its timeliness. Far from creating “white noise,” this granular data would provide the core, real-time information necessary to detect patterns of potential manipulation or insider abuse, for similar reasons that Form 4 requires daily disclosure. Investors and analysts would decidedly not be overwhelmed by daily reporting in structured data language, but instead benefit greatly from this more detailed information. Weekly or monthly disclosure would defeat one of the main aims and purposes of this proposed amendment: to allow interested parties to track and prevent senior executives timing their insider sales to coincide with rapid, buyback-driven share spikes. Reporting each individual transaction is one way to meet this aim, but may not strike the right balance of cost and benefit. Daily reporting certainly would—on par with disclosure of trades by insiders required by Form 4.

Further, requiring the average price paid per share in Form SR will be necessary. However, averaging this information out will mask important intra-day swings. As such, the SEC should also consider requiring the highest and lowest prices repurchased within the day so as to allow affected parties to detect potential abuse within a particular period of high price volatility.

Lastly, foreign and private issuers selling shares in the US market should be required to have the same buyback reporting standards as US companies. Given that regulatory standards on buybacks are significantly higher amongst US trading partners, it is likely that these foreign issuers are already disclosing this information in other jurisdictions, so would not incur compliance costs.

Amendments to Item 703

The proposed amendments to Item 703—together with daily disclosures in Proposed Form SR—

¹⁵ Focusing Capital On The Long Term Global (FCLTGlobal). 2020. *The Dangers of Buybacks: Mitigating Common Pitfalls*. Boston: FCLTGlobal. <https://www.fcltglobal.org/wp-content/uploads/The-Dangers-of-Buybacks-FCLTGlobal.pdf>.

will be very useful to give affected parties insight into how share repurchases reflect, or not, overall business strategy and the potential for long-term value creation, while also helping to detect and deter insider manipulation.

To meet those aims, analysts, shareholders, academics, workers, and others would benefit greatly from Item 703 requiring issuers to include the expected impact of stock buyback activity on the value of remaining shares, and to disclose the planned source of the funds used to execute stock buybacks, including how financing buybacks will affect leverage ratios.

Enhanced Disclosure a Welcome Step Even as Further Measures Needed

In sum, the SEC proposed changes under File No. S7-21-21 should be supported by all those interested in fair, efficient, and transparent financial markets. Ultimately, though, disclosure is not a substitute for regulation. Rule 10b-18 has failed to meet its aim and purpose to limit a firm from manipulating its stock price. Once welcome transparency rules are put in place, our task in the near future will be to develop new substantive rules that get to the heart of the harms of open-market share repurchases. First, corporate insiders need to be completely prohibited from personally benefiting during periods of stock buyback activity, including buyback announcement periods. It is time we end senior executives' opportunities to squander value by self-dealing through timely buybacks. And second, the SEC should join the rest of the world's financial market regulators, who impose substantive limits on the amount of corporate funds that can be spent on open-market stock buybacks. These common-sense limits would help refocus the C-suite on investing to make our economy more innovative, more competitive, and more productive—pushing toward, rather than pulling away from, more shared long-term value.

Sincerely,



Nicholas J. Lusiani
Director, Corporate Power