Commissioner, Securities and Exchange Commission

File No. S7-21-21

BIN 3235-AM94

Share Repurchase Disclosure Modernization

January 22, 2022

I am a CPA who oversees $50 million of public security investments. In this role, I monitor the equity securities in these portfolios.

I have been concerned about the lack of reporting and accountability concerning the stock repurchase activity of public companies. The current SEC reporting requirements noted in your Release Nos. 34-93783 are inadequate for the investor.

I am pleased the Commission has decided to increase the disclosure of information on stock repurchases on Form SR and Form 20-F.

Below are my suggestions in response to your Request for Comments on Form SR

1. For an investor, the daily disclosure will result in too much reporting, which will make the data not meaningful. Weekly reporting of repurchase activity on Form SR will supply the necessary information on a timely basis.

2. The stock repurchase program should be disclosed within 7 business days after the Board of Directors approves the program. The disclosure should include the number of shares authorized to be repurchased, the time frame for the repurchase and the business reasons for electing to make the stock repurchase. The reasons should be quantifiable so that they can be related to the suggested reporting on Form 20-F.

3. The data in the weekly Form SR report should be included in quarterly reports by the reporting entity so investors can see if there is any correlation between stock repurchases and sales by Insiders (Needs to be defined).

4. The failure to execute orders is not a major concern.

5. Reporting the weekly stock repurchases by the following Tuesday gives adequate time to prepare the Form SR. If the Form SR is publicly available the following day, investors should have timely information on a company's repurchase activity.

6. It would be of interest to report on the open market price and the price obtained in other markets so investors know if there are significant differences in the prices between the open market and other markets.

7. If the regulations define what is a material difference, such as a greater than 3% difference in the number of shares or average price per share reported on a Form SR, then any change exceeding the defined materiality threshold should require an amended Form SR.

8. If foreign or private issuers are selling shares in the US market, they should be required to have the same reporting standards as US companies.

9. Registered closed end funds should be required to have the same reporting standards as other public companies.

10. Stock repurchases are likely to have a greater impact on smaller companies. As a result, smaller companies should be required to follow the same Form SR and Form 20-F standards as other public companies.

There may be a cost issue here, but these reports should be less complicated for smaller companies. Being a public company requires information disclosure to shareholders, regardless of size.

11. There should be a de minimis exception. If a company purchases stock only to cover exercised stock options or compensation paid through issuance of stock, they should not be required to file Form SR or complete Form 20-F as this is not really a stock repurchase program with the goal of reducing the outstanding number of shares.

12. The important thing about filing or furnishing information is that the investing public have access to the information on a timely basis. Weekly reporting by the following Tuesday provides timely reporting without undue burden on the filer. Since filing the information is simple, intentional failing to file should incur a stiff penalty.

Below are my replies to your request for comment on Form 20-F

The new Form 20-F requires the issuer to describe “the objective rationale for each repurchase program and the process or criteria used to determine the amount of repurchases”. Information on the economic results of the stock repurchases would be helpful to investors.

An additional requirement should be an assessment of the actual results achieved compared to the rationale for each repurchase program. This would make management and Directors accountable to the shareholders for the results they expected in approving the stock repurchase program. This raises the issue of where the results of the

stock repurchase program should be reported to shareholders. This reporting be done annually in the Form 10-K.

Below are my suggestions in response to your Request for Comments on Form 20-F.

13. Item 703 should be expanded to include the rationale for the stock repurchase program and the expected results used to justify the programmed expenditure. The announcement should be made within 10 days after the Board approves the stock repurchase program and also be included in the subsequent Form 10K or Form 8K.

14. The proposed check box plus listing any Insider who sold shares within 10 days of the announced share repurchase program is necessary to inform the public if any of these people are looking to benefit from a stock price increase resulting from the announcement of the stock repurchase program. Item 703 should require issuers to publicly disclose the adoption of a share repurchase program on Form-20F within 10 business days of adoption.

15. I would suggest a 30-day period before and after adoption to report Insider transactions. The reason is that Insiders will know well before the announcement that the company is considering a stock repurchase program. An exception would be if an Insider had previously filed a program to sell or exercise their options before the 30-day window that had execution dates within that time period as the program would not have been influence by the proposed adoption of the repurchase program.

16. The Commission needs to provide guidance as to what the issuer may rely upon to comply with the checkbox requirement.

17. The objective and/or rationale for the share repurchase program should be disclosed and quantified. For example, if the Board approves the stock repurchase program because they feel the stock is undervalued, the Board should give a range of values they think is proper for the stock. This raises potential liability issues that also need to be addressed.

One commonly used rationale of stock repurchase programs is that it is "returning money to the shareholders". These programs do not actually return cash to the shareholders, only dividends do. The "return" to shareholders occurs through the increase in the market price of the common stock through the mathematical increase in the earnings per share as a result of the reduction in the number of shares outstanding through the stock repurchase program.

Currently, there is no reporting to shareholders about the amount the stock repurchase program affected earnings per share and stock price.

Shareholders are entitled to know how much the stock repurchase program increased earnings per share and stock price. There are two options available. One is to supply the raw information so that investors can use this information to calculate for themselves the results of the stock repurchase program. The second would be to specify the calculations the issuer would supply in the Form 10-K or Form 20-F. Determining how to make these calculations may require significant study and discussion. Thus, I recommend that issuers publish in tabular

form the basic information so investors can make their own calculations.

Exhibit A illustrates how investors could use this information. In its fiscal year ending September 30, 2021, Apple purchased 656 million shares of common stock in its share repurchase program at a cost of $86 billion (See Exhibit A attached). The shares purchased represented 3.9% of the average number of shares outstanding the prior year. The reduction in number of shares outstanding increased the earnings per share $.20 in 2021. This information can be compared to the rationale Apple used to adopt the repurchase program.

Another option would be to report the change in earnings per share over the life of the adopted stock repurchase program. If Apple's current program had been adopted at the beginning of the 2019 fiscal year, the reported information would show that the stock repurchase program increased earnings per share $.80 over the 3-year period 2019-2021.

Information should also be included to allow investors to calculate how much the increase in earnings per share through stock repurchases affected the market value of the stock, thus supporting the objective of returning money to shareholders. Exhibit A is an example of how this can be calculated.

18. I am not familiar with the details of Rule 10b-5(1)c, so I cannot comment on this item.

19. Repurchases based upon the safe harbor is of minor interest to me as an investor. I am more interested in whether the objectives of the stock repurchased program have been met.

20. Without supplying the additional information noted in item 17 above, the proposal would generate boiler plate justifications for stock repurchase programs, such as the common stock is undervalued or the company is returning money to the shareholders. Only by reporting objectively on the results will Boards of Directors begin looking carefully at the metrics used to approve stock repurchase programs. Issuers need to measure and report the results of stock repurchase programs to make the proposed reporting changes effective.

21. The Commission should decide a common reporting method for the proposed item 703 and Item 408 amendments along with the current requirement of those items. Duplication just confuses the investor. This decision should be made once the Commission adopts the amendments.

22. Form SR should be modified to include monthly and year to date data so investors can go to one place to get the information they need.

23. Of all these entities, only smaller reporting companies should have simplified reporting requirements. They should still report, but not as often, particularly with Form SR.

I have addressed with the FASB the issue of the lack of accountability for repurchased common stock. With annual total stock repurchases approaching $1 trillion per year, neither the Commission nor the

accounting profession can ignore measuring the economic results of these transactions.

I have attached to this email a memorandum I prepared in 2020 and a submission to the Financial Accounting Standards Board in 2021 discussing possible financial information that could be supplied to shareholders to reflect the economic results of stock repurchase programs.

Richard L. Hecht CPA MBA

Audubon Consulting Group LLC

COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION
FILE NO. S7-21-21
EXHIBIT A (IN MILLIONS)

EVALUATION OF BUYBACK EXPENDITURES

COMPANY	APPLE			
YEAR	30-Sep 2021	2020	2019	3 YEARS
SHARES BOUGHT - MILL	656	917	1,381	2,954
EXPENDITURE- MILL	$ 85,971	$ 72,358	$ 66,897	$ 225,226
COST PER SHARE	$ 131.05	$ 78.91	$ 48.44	$ 76.24
YE PRICE OF STOCK	$ 141.50	$ 115.80	$ 55.99	$ 141.50
GAIN(LOSS) YR OF PURCHASE/SHARE	$ 10.45	$ 36.89	$ 7.55	$ 65.26
GAIN(LOSS) YR OF PURCHASE	$ 6,853	$ 33,831	$ 10,425	192,765
PER SHARE OS SHARES	$ 0.41	$ 1.93	$ 0.56	11.43
PERCENT CHANGE	8.0%	46.8%	15.6%	17.5%
FUNDS BORROWED YR OF PURCHASE TO FUND	$ 6,413	$ 13,462	$ -	
INTEREST RATE	2.20%	2.20%		
INTEREST EXPENSE	$ 141	$ 296		
INTEREST COST PER SHARE	$ 0.01	$ 0.02		
AVERAGE SHARES O/S	16,865	17,528	18,596	
PERCENTAGE SHARES BOUGHT BACK	3.89%	5.23%		
INCREASE IN EPS THROUGH BUYBACK				
NET INCOME	$ 94,680	$ 57,411	$ 55,256	$ 94,680
EPS	$ 5.61	$ 3.28	$ 2.97	$ 5.61
EPS NO BUYBACK	$ 5.40	$ 3.11	$ 2.77	4.78
INCREASE IN EPS THROUGH BUYBACK	$ 0.21	$ 0.16	$ 0.21	$ 0.84
ADDITIONAL INTERST COST	$ (0.01)	$ (0.02)	$ -	$ (0.03)
NET EPS BENEFIT	$ 0.20	$ 0.15	$ 0.21	$ 0.81
PE RATIO BEG OF YR	40.5	29.7	13.2	13.2
PE RATIO END OF YR	31.6	40.5	29.7	31.6
INCREASE IN STOCK PRICE THORUGH BUYBACK	$ 6.38	$ 5.91	$ 6.10	$ 25.64
INCREASE IN SH VALUE THROUGH BUYBACK	107,560	103,601	113,449	$ 432,474
FUNDS EXPENDED ON BUYBACK	85,971	72,358	66,897	$ 225,226
NET BENEFIT TO SHAREHOLDERS	21,589	31,243	46,552	$ 207,248
EQUITY	$ 63,090	$ 65,339	$ 90,488	

1/27/2022

NET INCOME	$ 94,680	$ 57,411	$ 55,256
RETURN ON EQUITY	150.1%	87.9%	61.1%
BUSINESS ASSET INVESTMENT			
AR	$ 26,278	$ 16,120	
INV	$ 6,580	$ 4,061	
FA	$ 39,440	$ 36,766	
INTANGIBLE ASSETS	$ 48,849	$ 42,522	
LESS AP	$ (54,763)	$ (42,296)	
NET ASSETS	$ 66,384	$ 57,173	
NET INCOME	$ 94,680	$ 57,411	
RETURN ON NET ASSETS	143%	100%	
CASH DIVIDENDS	$ 14,431	$ 14,087	$ 14,129
STOCK ISSUED	$ 1,105	$ 880	$ 781
BUYBACK EXPENDITURE	$ 85,971	$ 72,358	$ 66,897
CASH FLOW			
OPERATING CASH FLOW	$ 104,038	$ 80,674	$ 69,391
CAP EX	$ (11,085)	$ (7,309)	$ (10,495)
ACQUISITIONS	$ (33)	$ (1,524)	$ (624)
DIVIDENDS	$ (14,467)	$ (14,081)	$ (14,119)
NET FREE CASH	$ 78,453	$ 57,760	$ 44,153
STOCK BUYBACK EXPENDITURE- NET	$ (84,866)	$ (71,478)	$ (66,116)
NET CASH	$ (6,413)	$ (13,718)	$ (21,963)
FUNDS BORRWED	$ 11,643	$ 13,462	$ (1,842)
NET INCREASE IN LOANS	$ (6,413)	$ (13,462)	$ (1,842)

Please receive this Invitation to Comment on File Reference No. 2021-004.

Question 1

Stakeholder -Investor, accountant analyst

Question 2

A top priority for the Financial Accounting Standards Board should be determining the proper accounting and reporting of the financial results from stock buybacks, the purchase of Treasury Stock by public corporations.

a. In 2018 and 2019, public corporations purchased $866 billion of their own stock. In 2020, they purchased another $519.7 billion and as of May 7, 2021, public companies have announced another $504 billion for purchases of Treasury Stock.

The current accounting treatment under ASC 505-30 records these expenditures at cost as a reduction in equity. The cost is not adjusted for the change in the market price of the stock even though the fair market value of the Treasury Stock is readily obtainable, and the company could sell the Treasury Stock or use it to acquire another company.

Stock buybacks are a major expenditure of corporate funds. Current accounting and reporting standards under GAAP do not provide the information needed to hold management and the Board of Directors, who approve stock buybacks, accountable for the financial results of these expenditures.

There is no accounting or reporting standard that has been established by the FASB to inform shareholders of the financial results of stock buybacks.

The primary theory supporting stock buybacks is that by reducing the number of shares outstanding, earnings per share (EPS) increases and therefore the market price of the stock increases. We know that this is not necessarily so, as several other factors unrelated to EPS, such as PE multiple and net income, affect the market price of a company's common stock.

Another rationale supporting stock buybacks is that the stock is undervalued and by buying its stock, the company is making an efficient use of its resources. If that rationale is used, then shareholders should be given the information to demonstrate that the rationale was correct. In practice, these intended results do not necessarily occur.

For instance, Walgreens Boots Alliance (WBA) spent $17.3 billion on the purchase of Treasury Stock from 2016 through 2020 at an average price of $69.88 per share. On August 31, 2020, its more recent fiscal year end, the closing price of the stock was $38.02. On the Treasury Stock that was purchased over the 5 years, the company lost $7.9 billion. This information was not reported to shareholders. The loss was material and should have been reported in WBA’s financial statements.

US companies utilize stock buybacks as a method to attempt to increase the stock price and the compensation of top executives and Directors. Under Internal Revenue Code Section 162(m), direct salary paid to the top 5 executives above $1,000,000 is not deductible. As a result, the bulk of top executive compensation is paid through stock compensation tied to financial performance, of which one is the increase in the stock price. Directors often have 50% or more of their compensation paid through stock options or grants. Management and

Directors have a significant personal incentive to increase the price of their company's stock.

Stock buybacks have been a major tool used to attempt to accomplish this goal. There has been no accountability for management or Directors as to whether this expenditure of corporate funds has accomplished their initial goals. In fact, there is no reporting of the financial goals the Board of Directors accepted to approve a stock buyback program, much less the financial results of this program. This lack of accountability has led to the tremendous increase in the use of stock buybacks. As accountants, we are obligated to report to shareholders the information they need to determine whether management and the Board of Directors are exercising their fiduciary obligation to work on behalf of the shareholders.

FASB cannot continue to ignore this issue.

b. I recommend the FASB Board appoint a study group to recommend new financial reporting standards for Treasury Stock.

The first issue to determine is whether the reporting should be through the financial statements as either a Profit or Loss item, part of Other Comprehensive Income or Loss, or an adjustment to the Equity section of the Balance Sheet.

Part of this issue is whether Treasury Stock should be valued at fair market value under the standards of ASC 321-10-35-1. If Treasury Stock is not retired, then it is available to be either sold for cash or to be used to acquire another company; in either case, its value will be the fair market value of the stock on the date the stock is tendered. It can be argued that Treasury Stock should be treated as an asset, as one asset, cash, is used to acquire Treasury Stock and Treasury Stock has the same attributes of any public held company, in that it is readily tradeable, and its fair market value can be easily determined.

If it is decided that Treasury Stock should be valued at fair market value in the Equity section of the Balance Sheet, then the FASB needs to determine how the annual gain or loss should be reported. If the gain or loss is reported in the Equity section, there will be no change in the total Equity of the company. The point is to inform shareholders about the gain or loss on Treasury Stock; shareholders should know this, because the funds used to buy Treasury Stock could have been paid to them as dividends or invested in growing their company.

The Notes to the Financial Statements should contain a Note reporting the financial results of the purchase of Treasury Stock and should include the following information.

1. How much the purchase of Treasury Stock increased Earnings Per Share (EPS). Shareholders currently have no information on this topic. Shareholders need to understand whether the effect on EPS was significant or not.

The FASB needs to decide whether this calculation should be based upon the current year's transactions or those over several years. Integrated into this calculation should be the offsetting shares issued as additional compensation of employees and Directors. Also, to be considered is whether the increase in EPS should be reduced by the interest cost incurred on debt borrowed to fund Treasury Stock purchases.

2. How much did the increase in EPS increase the price of the stock? Publicity from companies implies that the purchase of Treasury Stock is a major factor in increasing a company's stock price. That may or may not be the case. Shareholders should receive this information from an independent source.

The change in EPS through the purchase of Treasury Stock should be multiplied by the year end PE ratio to determine the increase in stock price caused by the purchase of Treasury Stock and this information should be included in the Notes.

3. Determine whether there is a holding gain or loss on the Treasury Stock purchased. To determine whether the investment in Treasury Stock was profitable, the total spent on the purchase of Treasury Stock should be compared to the increase in stock price determined in 2 above multiplied by the average number of shares outstanding during the year.

This shows if there was a real increase in the value of stock to the shareholders by the expenditure of corporate funds to purchase company stock. The resulting return on the investment in Treasury Stock can be compared to the company's return on assets to allow shareholders to evaluate whether the investment of corporate funds in Treasury Stock yields a higher return than investment in operating assets or paying increased dividends to shareholders.

A further question to be discussed is whether the calculation should include an income tax provision if the FMV of the purchased Treasury Stock is higher than the cost. The tax issue has to do with the contention by many that the increase in stock price due to stock buybacks is a tax-free return to shareholders; it is not, because shareholders will owe income tax when they sell their stock.

4. The Notes should include a table which shows how the Treasury Stock purchases were funded. The table could show Operating Cash Flow reduced by Capital Expenses and Dividends, leaving cash flow available to fund Treasury Stock purchases. If the Treasury Stock purchases are greater than the available cash, then the funds needed to purchase Treasury Stock were borrowed.

A prime example of this is Starbucks, which borrowed over $12 billion in 2018-2020 to purchase $19 billion of Treasury Stock resulting in a negative net worth on September 30, 2020 of $7.8 billion. Shareholders need to know this information without being accountants or analysts.

c. With the tremendous amount of corporate funds being dedicated to the purchase of Treasury Stock, the FASB is obligated to determine how public companies should report the financial results of these purchases. Until there is accountability for the financial consequences of Treasury Stock purchases, their use will continue to grow even if reinvestment of those funds in the business would be more beneficial to the company. The amount being spent on stock buybacks is too big to be ignored.

If the FASB refuses to deal with this issue, then either the SEC or the US Congress will, as investors and employees make an issue of the use of corporate funds to primarily benefit senior management and Directors. The FASB has the choice of leading or being left behind on an issue they should address.

As we have seen with the corporate executive compensation issue, leaving Congress to address this issue is a mistake. Further, allowing other entities to address an issue which the accounting profession should address will weaken the influence the profession has on

the financial operation of our economy. This is an issue for the accounting profession to address before it is too late!

Question 3.

Resolving the topics discussed in this ITC will not be easy. There are many interest groups that wish to continue the lack of accountability for the purchase of Treasury Stock. This includes corporate management and Directors and Wall Street banks. I see no reason to address other GAAP issues currently. This project will be challenging and controversial, but it is necessary that the FASB address it now.

Question 4.

I have no financial reporting topics beyond these that should be a top priority of the FASB.

Question 5.

I am not able to address the priority of other issues on the FASB's technical agenda, but I feel strongly that accounting for the financial results of Treasury Stock purchases is a major issue that has been ignored for too long and needs to be addressed now as a top priority.

Richard L. Hecht CPA MBA
Audubon Consulting Group LLC

Audubon Consulting Group LLC

Date: September 1, 2020
From: Richard L. Hecht, CPA MBA

Re: Methods for recognizing the economic results of Stock Buybacks

In my April 20, 2019 memo, I argued for the accounting profession (FASB) to take up the issue of recognizing the economic impact of stock buybacks.

There are several options available to report the economic results of stock buybacks.

The most important issue is to report the economic results to the shareholders, not whether or not these should be included in the income statement of the reporting company. Due to the impact and volatility such reporting could have on the reported net income of the company, footnote disclosure may be a better reporting mechanism; the FASB should decide this.

Here are various options which are not necessarily all inclusive but are a starting point.

1. Compare the cost per share to buy back the company's stock with the per share market value of the stock at the end of the reporting period. I suggest this be done for stock purchased in the current year, the past 3 years and the past 5 years. This would show whether the buyback cost is greater or smaller than the current fair market price. Show the absolute change and percentage change.

2. Multiply the difference between the cost and year end FMV of the stock by the average number of shares outstanding during the period. Compare this to the total expenditure on stock buybacks. This will demonstrate whether the funds expended generated a greater increase in the FMV of the stock than the funds spent on the stock buyback. If the FMV increase is greater, that would demonstrate that shareholders got a return greater than the cost. There is a question whether the income tax that would be paid on the gain should be included in the calculation since many analysts hold the position that the gain in stock price is tax free compared to the use of funds to pay taxable dividends.

3. Calculate the increase in Earnings Per Share (EPS) as a result of the stock buybacks, net of additional interest cost per share for funds borrowed to execute the stock buybacks. This should be done for buybacks in the current year and over the last 3 and 5 year periods to reflect the cumulative effect on EPS of stock buybacks.
4. Multiply the increase or decrease in EPS calculated above by the average PE ratio for the reporting period. This will show the effect the increase in EPS has on the stock price.

This does not take into account other factors affecting the stock price, primarily the PE ration and the absolute earnings of the company.

5. Multiply the increase or decrease in the price cause by the change in EPS due to stock buybacks by the average number of shares outstanding. Then compare this to the amount the company spent on stock buybacks. This will show whether the investment by the company in stock buybacks gave shareholders a return greater than the amount of funds the company spent on stock buybacks. This calculation should also be done for 1,3 and 5 years to show the cumulative effect.

6. Show how the stock buybacks were funded by taking the operating cash flow and subtracting capital expenses, company financed acquisitions and dividends. Compare the remainder to the amount spent on stock buybacks. If stock buybacks are greater, then the company borrowed money to fund the buybacks. The borrowed funds should be used as the basis for calculating the per share interest costs to reduce the increase in EPS through stock buybacks in item 3 above.

The economic measurement options noted above are ideas to be discussed as a basis for determining how to report the economic effect of stock buybacks to shareholders. This should be the purview of the FASB; if it does not undertake this issue, eventually the US Congress will. I believe an accounting result will be better than a political result for shareholders.