April 1, 2022

Chair Gary Gensler
Honorable Commissioners
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090
Via email: rule-comments@sec.gov

Re: Share Repurchase Disclosure Modernization

File No. S7–21–21

Dear Commissioners,

On behalf of Public Citizen's more than 500,000 members and supporters across the country, we provide the following comment regarding the Securities and Exchange Commission's (SEC or commission) proposal regarding share repurchase disclosure modernization.[1] Many Public Citizen members are investors and rely on market integrity.

Share repurchases, or buybacks, have become a major feature of the stock market. In 2020 alone, companies bought more than $700 billion worth of their own shares.[2] From 2010 to 2019, publicly traded companies spent $6.3 trillion on buybacks. That average is equal to about 100% of the corporate profits of non-financial firms in .[3]

In theory, management repurchases shares when they decide there is no more valuable use for shareholder capital, such as through an expansion of employees, factories, or research. These repurchases would arguably be made when it was most financially prudent for the firm. As with any asset, an astute investor should "buy low and sell high." Given that the market has bounced along record highs for the last decade, this has certainly not been a time for corporate managers to "buy low." Because of this, some analysts have suggested that other factors may have motivated this repurchasing spree. A number of scholars assert that it may be connected to executive compensation, since a buyback will generally increase a share

[1] Securities and Exchange Commission, *Proposed Rule, Share Repurchase Disclosure Modernization*, FEDERAL REGISTER (Feb. 15, 2022) https://www.govinfo.gov/content/pkg/FR-2022-02-15/pdf/2022-01068.pdf
[2] Id,
[3] Lenore Palladino, William Lazonick, *Regulating Stock Buybacks, the $6.3 Trillion Question,* ROOSEVELT INSTITUTE (May 2021) https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_Stock-Buybacks_Working-Paper_202105.pdf

price and thereby improve stock-based compensation.[4] Others assert the buybacks may be part of earnings management, since profits are usually expressed in "per-share" units.[5] Buying back stock means that the same earnings are allocated against fewer shares, suggesting the per-share earnings are increasing, when actual earnings are not.

Buybacks can harm a company's potential for growth or hinder its current operations. Some firms have laid off employees following buybacks or cut spending on safety.[6]

Currently, firms that issue securities that are publicly traded may repurchase their shares through a variety of means,[7] Generally, publicly traded companies disclose repurchase plans at the time that the board of directors authorizes them. Then, the repurchases are executed over time. These companies are not required to disclose the specific dates when they will execute the trades. Investors do not become aware of the repurchases typically until a regular quarterly report has been issued, which is often long after the repurchases are executed. This delay also advantages insiders who know the timing of buybacks.

We applaud the SEC for proposing to improve these disclosures. Importantly, the SEC proposes a new form SR (share repurchase). This form would be filed one day after a share repurchase. The disclosure would include the total number of shares purchased and average price paid. Ideally, this will help investors better understand the extent of an issuer's activity in the market and how it may impact the share price. That sheds light on the company's motivation, including how it might affect executive compensation.

The SEC also proposes (under Item 703) to require firms to explain *why* their buyback decisions are beneficial. This explanation must include the expected impact of the stock buyback on the stock price, the source of funds to repurchase the stock, and how financing will affect the firm's outstanding loan liabilities. We support this requirement. A buyback essentially is management's declaration that it cannot profitably employ shareholders' capital and that the capital should be returned to shareholders to find a better investment. Investors deserve to understand which companies are not focused on growth or improving business operations with shareholder capital.

While we support these important new disclosures, we ask the SEC to take further steps to prevent manipulation. Importantly, insiders should be prohibited from trading their own company stock during a repurchase period. One study of transactions (at nonfinancial corporations) from 2005 to 2017 found that net insider sales of more than $100,000 were twice as common in quarters when that company engaged in

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[4] Robert Jackson, *Stock Buybacks and Corporate Cashouts*, SECURITIES AND EXCHANGE COMMISSION (June 11, 2018) https://www.sec.gov/news/speech/speech-jackson-061118

[5] Signatories, *Petition for Rulemaking to Revise Rule 10b-18*, SECURITIES AND EXCHANGE COMMISSION (June 25, 2019)

[6] Lenore Palladino, *Examining Corporate Priorities: The Impact of Stock Buybacks on Workers, Communities and Investors,* HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, (Oct 22, 2019) https://corpgov.law.harvard.edu/2019/10/22/examining-corporate-priorities-the-impact-of-stock-buybacks-on-workers-communities-and-investors/

[7] These include open market purchases, tender offers, private negotiated transactions, and accelerated share repurchases.

stock buybacks than in quarters with no buybacks.[8] A number of countries currently restrict insider trading during buybacks.[9]

As we work with Congress to achieve additional reforms on the use of buybacks, we very much appreciate the SEC's commonsense reforms that will help protect Public Citizen members who invest in publicly traded companies. We believe our members will be better served if buybacks can be divorced from manipulations that serve executive compensation by banning insider trading during buyback periods.

For questions, please contact Bartlett Naylor a [redacted]

Sincerely,

Public Citizen

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[8] Lenore Palladino, *Do Corporate Insiders Use Stock Buybacks for Personal Gain?* ROOSEVELT INSTITUTE (October 2019) https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Corporate-Insiders-use-Stock-Buybacks-for-Personal-Gain_Working-Paper-201910.pdf

[9] Lenore Palladino, *Examining Corporate Priorities: The Impact of Stock Buybacks on Workers, Communities and Investors,* HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, (Oct 22, 2019) https://corpgov.law.harvard.edu/2019/10/22/examining-corporate-priorities-the-impact-of-stock-buybacks-on-workers-communities-and-investors/