NATIONAL EMPLOYMENT LAW PROJECT

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Comment from the National Employment Law Project on Share Repurchase Disclosure Modernization (File No. S7-21-21)

The National Employment Law Project (NELP) appreciates the opportunity to comment on the Securities and Exchange Commission's proposal to reform disclosure of open-market share repurchases, which are sometimes referred to as "stock buybacks."

NELP is a nonprofit, non-partisan research and advocacy organization specializing in employment policy. For over 50 years, NELP has sought to ensure that this country upholds, for all workers, the promise of opportunity and economic security through work. NELP fights for policies to create good jobs, expand access to work, and strengthen protections and support for workers, including unemployed workers. We publish research that illuminates workers' issues; promote policies that improve workers' lives; lend deep legal and policy expertise to important cases and campaigns; and partner with allies to advance crucial reforms. NELP has collaborated with federal, state, and local lawmakers on a wide range of workforce issues including wage standards, job creation, access to unemployment insurance, employment law enforcement, and health and safety protections.

NELP's recent work includes research on the magnitude of corporate stock buyback spending in relation to worker compensation in several low-wage industries in the United States.[1] Corporate abuse of stock buybacks diverts profits away from worker wages and benefits and into the hands of executives and short-term investors, driving economic and racial inequality in this country.

Proposed Rule 13a-21 and Proposed Form SR are Crucial to Effective Enforcement of Current Regulations

We commend the Commission for proposing a new Exchange Act Rule 13a-21 and Form SR, which would establish new disclosure requirements for corporations repurchasing their own shares. The proposed rule and new form would represent a vast improvement over the current regulatory regime; they would greatly increase corporate transparency and accountability.

[1] Irene Tung and Katy Milani, "Curbing Stock Buybacks: A Crucial Step to Raising Worker Pay and Reducing Inequality," National Employment Law Project and the Roosevelt Institute. July 2018. https://www.nelp.org/publication/curbing-stock-buybacks-crucial-step-raising-worker-pay-reducing-inequality/

The detailed and real-time information about buybacks collected under the proposed rule would enable enforcement of buyback regulations already on the books. Indeed, some current buyback activity may be illegal under SEC Rule 10b-18, the "Safe Harbor," but neither the public nor enforcing parties have access to the information required to determine whether a company's buyback activity meets existing legal requirements.

The proposed rule would make accessible critical information currently unavailable to analysts, workers, policymakers, and the shareholding public. The SEC's proposed rules would also compel firms to explain *how* their buyback decisions are beneficial, while helping to curb the incentives for corporate insiders to conduct stock buybacks with corporate funds as a scheme to increase their own compensation.

Currently, workers and the public have no information on these decisions, even though executives often spend more on buybacks than the company makes in net profits. A 2018 NELP and Roosevelt Institute study illustrates the magnitude of buyback spending compared to worker compensation by focusing on three important industries—restaurant, retail, and food manufacturing.

Examining the latest available annual data, the study exposes the extent of recent buyback spending across the U.S. economy from 2015 to 2017—finding that companies spent almost 60 percent of their net profits on buybacks. In 14 of 18 major industry groups in the U.S., a majority of companies spent more than half of net profits on buybacks, demonstrating that high levels of buybacks spending are the norm. This corporate spending imbalance hurts the majority of people in the U.S. who depend on wages and salaries—not investment earnings—to live.

For example, we found that between 2015-2017, the restaurant industry spent more on stock buybacks than it made in profits, funding buybacks through debt and cash reserves. Buybacks totaled 136.5 percent of net profits. Similarly, companies in the retail and food manufacturing industries spent 79.2 percent and 58.2 percent, respectively, of their net profits on share buybacks. Corporate executives spent large sums on buybacks while millions of workers in these industries received low and poverty wages.

Daily disclosure of buyback activity would allow NELP and others to compare in real time corporate buyback spending and executive compensation on the one hand and job creation and worker compensation on the other, and to share that information with important stakeholders such as worker organizations and the public.

Proposed Rule 13a-21 and Form SR Would Allow Research and Advocacy Organizations Like NELP Timely Access to Data That Are Critical to Our Work

NELP's mission includes publishing research on the barriers to economic security and opportunity for US workers. We aim to show how millions of our nation's workers—who toil in low-wage, economically insecure jobs and are disproportionately women and people of color—could benefit if their employers directed corporate earnings to workers instead of share repurchases. This new proposed rule will provide us and other researchers and advocates with higher quality data on company stock buyback activity, which allows corporate executives to divert company resources away from job creation and worker compensation. The ability to monitor and publicize these activities in real time is central to our work of holding corporate insiders accountable and advancing reforms that level the playing field for all stakeholders. Access to share buyback data daily (per the new rule) will save NELP months of lag time currently spent waiting for quarterly data and staff time currently spent combing through quarterly releases, amounting to at least $30,000 in programmatic and staff expenses.

Because such data are not currently disclosed by companies, reproducing them independently would be impossible. The cost of delayed reporting would amount to approximately $50,000 dollars for NELP in staff time and programmatic costs spent attempting to generate alternative methods for simulating these data, and $25,000 dollars in lost opportunities to create issue campaigns and publish analyses that highlight stock buyback activities and their impacts on workers.

We appreciate the Commission's consideration of stock buybacks disclosure reform and the efforts contained in Proposed Rule Rule 13a-21 and Form SR. We request that the Commission include an expanded and delineated list of the Rule's intended beneficiaries, including research and advocacy organizations such as NELP, with the potential benefits quantified. Please do not hesitate to contact us for further discussion.