



March 31, 2022

Ms. Vanessa A. Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Share Repurchase Disclosure Modernization; File No: S7-21-21**

Dear Ms. Countryman:

HudsonWest LLC (“**HudsonWest**”) appreciates the opportunity to comment on the above-referenced proposed amendments to the disclosure regime surrounding share repurchases (the “**Proposal**”).<sup>1</sup> HudsonWest is a registered broker-dealer that advises corporate issuers on equity-linked solutions, including structured share repurchases such as accelerated share repurchases (“**ASRs**”). HudsonWest appreciates the detail the Securities and Exchange Commission (the “**Commission**”) has given to the Proposal but would like to comment specifically on the impact these amendments would have on repurchases of stock by issuers via ASRs.

In our comment letter dated of even date to the Commission’s proposed rule on Rule 10b5-1 and Insider Trading,<sup>2</sup> we give an overview of ASRs – their structure, their rationale and their benefits for issuers and market efficiencies.

In this letter, we therefore focus solely on providing the Commission with comments directly on the Proposal and the requests for comment therein.

**1. Should we adopt new Form SR to require daily repurchase disclosure, as proposed? Would less frequent disclosure of daily share repurchases (e.g., weekly, monthly, or quarterly disclosure) provide sufficiently timely information about issuer repurchases? Would less detailed disclosure (e.g., aggregated disclosure of repurchases on a weekly or monthly basis, rather than daily), that is furnished more frequently than under current Item 703, provide sufficiently useful disclosure? Instead of adopting Form SR, should we amend Form 8-K or another existing form to require daily repurchase disclosure?**

Commenting specifically with respect to ASRs, HudsonWest believes that the Commission should clarify that Form SR, if adopted substantially in its entirety, would require that issuers entering into ASRs furnish Form SR solely with respect to (1) the initial delivery of shares received by the issuer at/shortly following the inception of the ASR and (2) any shares delivered by the bank counterparty to the ASR (the “**dealer**”) upon any interim or final settlement of the ASR.

The public disclosure of ASRs is generally already fulsome, typically indicating: (1) the total notional amount of the ASR, (2) the number of shares the issuer expects to receive as an initial delivery, (3) the maximum maturity of the ASR and (4) that the final price at which the issuer repurchases shares under the ASR will be calculated over an averaging period and will equal the arithmetic average of the volume-weighted average prices of the shares over the averaging period, less a discount.

As the ASR is a principal trade for the dealer’s own account, and as the actual number of shares to be repurchased by the issuer under the ASR depends on an average of the daily volume-weighted average prices of the issuer’s shares (less a discount) during the life of the ASR (the tenor of which is variable at execution of the ASR), requiring issuers to furnish Form SR in respect of any other point during the ASR would be both misleading and unworkable. Issuers do not “repurchase” any shares on any date during the life of the ASR; nor are they “owed” any shares because of the volume-weighted average price of the shares on a given date. Moreover, and perhaps most importantly, if the Commission were to require that Form SR be furnished daily or at any other point other than at

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<sup>1</sup> Share Repurchase Disclosure Modernization, 87 Fed. Reg. 8443 (Feb. 15, 2022).

<sup>2</sup> Rule 10b5-1 and Insider Trading, 87 Fed. Reg. 8686 (Feb. 15, 2022).

inception and at settlement, bad actors would be able to glean expected tenors of the ASRs and would be able to front-run these transactions, to the detriment of the market generally and shareholders of the issuer.<sup>3</sup>

**2. Should we instead require an issuer to disclose its share repurchase program and continue to report actual share repurchases on a periodic basis? If so, should we require the issuer to disclose its planned share repurchases at least 30 days prior to the first repurchase transaction? Would a different disclosure deadline be more appropriate? Should the disclosure specify the amount of securities that may be purchased or any additional information? How would the burden of complying with such requirements compare with the burdens of complying with proposed Form SR? In reporting actual share repurchases under this approach, should we require the periodic disclosure to be broken out on a monthly basis, as currently required under Item 703 of Regulation S-K, Item 16E of Form 20-F, and Item 9 of Form N-CSR, or should we expand the disclosure to require a breakout of repurchase activity on a more frequent basis?**

We believe that disclosing any planned share repurchases at least 30 days prior to the first repurchase transaction would be less desirable compared to the current and proposed disclosure regimes. Furthermore, this waiting period would allow bad actors to engage in transactions to exploit this delay in repurchase activity. We also believe that issuers would face undue burdens in locking in share repurchase plans for a lengthy period of time and that any modifications to these planned share repurchase activities could trigger additional waiting periods that would be unworkable in practice. We do not believe this 30-day waiting period (or any other waiting period) would have a material effect on improving the share repurchase disclosure regime and would merely introduce unnecessary burdens for issuers.

**4. Should we require disclosure of executed share repurchase orders on Form SR, as proposed? Are there concerns that executed orders may fail to settle and that issuers would not be able to accurately disclose the shares purchased on the next business day? How frequently do executed orders fail to clear and settle? Should we base the requirement on something other than order execution? For example, should we require issuers to furnish Form SR within one business day after the order clears and settles and the issuer receives trade confirmation?**

Please refer to our response to question 1 above.

**6. As discussed above, proposed Form SR would require daily reporting of the total number of shares repurchased, the average price paid per share, issuer share repurchases on the open market, shares purchased in reliance on the safe harbor in Rule 10b-18, and shares purchased pursuant to a plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Should we adopt these Form SR disclosure requirements, as proposed? Should we eliminate or modify any of these requirements? Should we add any disclosure requirements to Form SR, such as disclosure of the highest and lowest price paid per share for open market purchases or any other information?**

We support the Commission's proposal in terms of the information that should be included in Form SR, should it be adopted. However, we would ask that the Commission clarify that, in the ASR context:

- (1) The "total number of shares repurchased" would be (x) on the initial share delivery date, the number of initial shares and (y) on any future settlement date, the actual number of shares delivered to the issuer; and
- (2) The "average price paid per share" would be (x) on the initial share delivery date, the closing price of the shares used to determine the number of initial shares and (y) on any future settlement date, the effective price at which the shares were repurchased, which would equal the notional amount of the contract divided by the total number of shares delivered<sup>4</sup>.

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<sup>3</sup> We additionally note that, as with other share repurchase transactions that would be subject to Form SR and would require daily reporting, the administrative burden to issuers and dealers in ASRs would be significant and potentially overwhelming.

<sup>4</sup> For any interim settlement, which is atypical in the ASR context, the average price would be the running average reference price of the contract (typically, the average of the daily volume-weighted average price of the shares, less a discount).



We very much appreciate the opportunity to comment on the Commission's Proposal. Members of HudsonWest would be happy to discuss any of our comments with the Commission in further detail. Any inquiries can be directed to [barry.gewolb@hudson-west.com](mailto:barry.gewolb@hudson-west.com).

Yours truly,

A handwritten signature in black ink that reads 'HudsonWest LLC'.

HudsonWest LLC