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March 31, 2022

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

Submitted via email: rule-comments@sec.gov

Re: Proposed Rule Regarding "Share Repurchase Disclosure Modernization" (File Number S7-21-21)

Dear Ms. Countryman:

Jones Day is pleased to submit comments relating to the Securities and Exchange Commission's (the "Commission") proposed new and amended rules and forms, as set forth in Release No. 34-93783, relating to Share Repurchase Disclosure Modernization (the "Proposal"). Jones Day is an international law firm with over 2,500 lawyers practicing in 42 offices worldwide. The firm advises a variety of participants in the U.S. capital markets, including issuers, investors, financial institutions and financial advisors.

While we support the Proposal's goals of improving the quality, relevance and timeliness of information related to issuer share repurchases, we believe the Proposal as currently drafted could lead to important unintended consequences to the detriment of issuers and retail investors, and that those consequences could outweigh the benefit to the U.S. capital markets as a whole.

Our comments below address select issues associated with the Proposal that are of particular concern.

1. A One-Day Reporting Obligation Would Create a Significant Burdens for Many Issuers

The Proposal would create a new Exchange Act Rule 13a-21 and Form SR that would require an issuer to furnish a Form SR reporting specified information regarding share repurchase activity before the end of the first business day following the day on which the issuer executes a share repurchase. The Commission believes that requiring issuers to furnish a Form SR during this one-day period would enhance transparency and enable more timely investor review of issuer share repurchases. We expect that one-day reporting would create significant additional administrative burdens on many issuers and is not the optimal approach to achieving the Commission's objective of increasing transparency.

A one-day Form SR reporting obligation would likely significantly increase compliance costs for many issuers and has the potential to result in inaccurate reporting. Many issuers that are engaged in share repurchases may do so on a frequent or even near daily basis, and, accordingly, may find themselves continuously scrambling to assemble, process and confirm trading information such that a Form SR associated with a particular trade day is furnished within a 24-hour period. Issuers will likely need to spend considerable time and expense establishing systems (with redundancies and verification) to ensure a one-day turnaround. Additionally, reporting errors may be common, particularly given that preliminary reports provided by brokerage firms often must be updated, and while the Proposal would require material errors or changes to be corrected on an amended Form SR, even immaterial errors or frequent amendments have the potential to create confusion in the marketplace.

The Commission notes in the Proposal that there are often legitimate business reasons for an issuer to engage in share repurchases, though also notes that repurchases could be driven by other incentives. Specifically, the Commission notes that the timing of particular repurchase activity could be used to affect EPS or increase share prices in order to enhance executive compensation and insider stock value. We believe that the Commission's concerns relating to this behavior could be addressed through the existing share repurchase disclosure regime. For example, requiring additional disclosure regarding specific (including daily) repurchase activity to be provided on a quarterly basis would also provide investors with the additional insight regarding potential motivations associated with that repurchase activity. Further, when an aggregation of such repurchase data covering a longer period is presented collectively in a single disclosure, investors may find it easier to discern trends than if such information is provided piecemeal on a daily basis. A one-day disclosure period is not the sole, or in our view optimal, means to achieve the Commission's objective of increasing transparency.

If the Commission determines that the current quarterly disclosure regime is not sufficient, we believe that a longer reporting cadence, such as a one-month or 10-day deadline post trade date, is more practical. Such a deadline would effectively address the concerns outlined in the Proposal while balancing the administrative burdens to issuers and reducing the potential for error.

2. A One-Day Reporting Obligation Could Advantage Institutional Investors to the Detriment of Longer-Term Retail Investors

We also expect that one-day reporting would provide advantages to short-term traders at the expense of long-term shareholders. We believe that a one-day reporting obligation will ultimately amount to "noise" to retail investors while at the same time creating market arbitrage opportunities for hedge funds and other sophisticated institutional investors. Given the expected volume of Form SR reports, we suspect retail investors may not have the time or resources to carefully review, and discern trends from, daily reports. On the other hand, hedge funds and institutional investors may scrutinize daily Form SR reports to analyze an issuer's multiday

repurchase strategy or to surmise a point in time in which an issuer becomes in possession of material, nonpublic information ("MNPI").

The volume and breadth of information proposed to be provided on a daily basis may limit its usefulness to those investors, particularly retail investors, who may be less able to quickly discern trends from the data provided. We fear that the "noise" associated with daily Form SR reports could put retail investors at an "actionable intelligence" disadvantage relative to sophisticated institutions that have the resources to quickly analyze such data and potentially act upon it.

We expect that hedge funds and sophisticated institutional investors, many of whom will no doubt have a short-term investment horizon, are more likely to apply their resources to analyze daily Form SR data in an effort to ascertain an issuer's repurchase strategy, including pricing parameters and timing, and potentially use that data for arbitrage opportunities. Additionally, these sophisticated investors may use this real-time information to surmise a point in time in which an issuer determines that a potential material transaction or other significant development may constitute MNPI. A classic example would be where an issuer that reports regular and consistent trading activity suddenly halts reporting – sophisticated institutional investors may view such a halt as a signal that a material transaction or other significant development is pending and could attempt to capitalize on that information. One-day reporting could not only benefit institutional investors to the detriment of retail investors but could also lead to market speculation and share price volatility.

3. Requiring an Issuer to Disclose the "Objective or Rationale" for its Share Repurchases Will Not Advance the Stated Goals of the Proposal

The Proposal would require issuers to describe the objective or rationale for their share repurchases. We understand that it is the Commission's position that this information, together with other disclosures contemplated by the Proposal, will "help investors to assess whether the issuer or its insiders are potentially engaged in self-interested or otherwise inefficient repurchases."

As suggested by the request for comments in the Proposal, we believe that the proposed requirement would result in the development of "boilerplate" disclosure among issuers and would ultimately not result in disclosure that is meaningful to investors. It is difficult to imagine an issuer providing disclosure beyond the objective of returning capital to shareholders by repurchasing shares that it believes are undervalued, and we do not expect that issuers would disclose the process or criteria used to determine the amount of repurchases beyond reference to an unspecified share price cap. This boilerplate disclosure would be unlikely to assist an investor in assessing whether a particular share repurchase may have been self-interested or inefficient.

4. Application to Multijurisdictional Disclosure System Filers

Even if the Commission decides to go forward with the Form SR reporting obligations and to apply the obligations equally to foreign private issuers ("FPIs") and domestic issuers, we believe that the Form SR reporting obligation should exclude Canadian multijurisdictional disclosure system ("MJDS") filers. Such an exclusion would be consistent with the spirit of the MJDS as current Canadian disclosure requirements related to share repurchases are sufficient to protect U.S. investors.

Generally, the MJDS permits eligible Canadian issuers that become subject to U.S. periodic reporting obligations to satisfy those obligations by using their Canadian continuous disclosure documents within the timelines prescribed by applicable Canadian requirements. This deference to home country rules reduces costs, timing issues and other complications associated with dual regulation. As Canada already requires issuers to comply with extensive share repurchase disclosure requirements, that deference warrants excluding MJDS filers from the proposed rule amendments.

In accordance with Canadian requirements, Canadian issuers, including MJDS filers, already disclose substantially similar information to the information that would be disclosed in a Form SR (including, among other information, the date of the repurchase, the total number of shares repurchased and the transaction price). Canadian issuers already must publicly file insider reports following any acquisition or disposition (including a cancellation of previously acquired securities) of beneficial ownership of the issuer's securities. Although the timing of the disclosure differs under the Canadian requirements (with an issuer required to file an insider report within ten days (in the first instance) or five days (in subsequent instances) of any repurchase, unless such repurchase is made under a normal course issuer bid, in which case the issuer may choose to file an insider report within ten days of the end of the month in which the repurchase(s) occurred), substantively, the required Canadian disclosures align with proposed Form SR and achieve the Commission's goal of providing transparency and addressing information asymmetries that may currently exist between issuers. To apply the Form SR requirement to MJDS filers would be duplicative, provide little additional value to investors and would run counter to the MJDS's goal of reducing the burdens of dual regulation. Therefore, we request that MJDS filers be exempt from the Form SR filing obligation.[1]

[1] In addition to insider reporting requirements, under Canadian securities rules, issuers that implement a normal course issuer bid are required to issue a press release with detailed information about the proposed repurchases under the bid for the following 12-month period, including information about the maximum amount of shares to be repurchased (which is commonly limited to maximum 10% of the issued and outstanding shares not held by the issuer's insiders), applicable daily repurchase limits, information about prior repurchases (including the aggregate amount of share repurchased and the average price per share) and whether the issuer intends to enter into an automatic share repurchase plan, thus providing sufficient information of the proposed repurchases to market participants.

As proposed, the revised and expanded periodic disclosure requirements in Item 703 of Regulation S-K would be generally applicable to FPIs filing on Form 20-F, though not MJDS filers filing on Form 40-F. We agree with the Commission's exclusion of MJDS filers from these enhanced disclosure requirements as MJDS filers already disclose similar information in accordance with Canadian requirements. An alternative determination to apply the revised disclosure requirements to MJDS filers may factor into decisions by Canadian issuers regarding whether to access the U.S. capital markets and become SEC registrants.

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Our firm believes that a longer cadence for reporting the more detailed share repurchase information contemplated by the Proposal, such as the existing quarterly disclosure or, if the Commission determines quarterly disclosure is not sufficient, a one-month or 10-day deadline post trade date, would achieve most, if not all, of the goals set forth in the Proposal. Such a deadline would reflect a more practical approach than a one-day reporting obligation while alleviating much of the administrative burden to issuers and addressing potential disadvantages to retail investors. Our firm also believes that requiring disclosure of the objective or rationale for share repurchases would result in boilerplate disclosures that are not meaningful to investors. Finally, our firm recommends that MJDS filers be carved out of the Form SR reporting obligations.

Thank you for your attention to this matter.

Sincerely,

/s/ Jones Day