



Norfolk Southern Corporation
650 W. Peachtree Street NW
Atlanta, GA 30308
Telephone: 470/463-4400

Mark R. George
Executive Vice President Finance
and Chief Financial Officer

March 31, 2022

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

Submitted via email: rule-comments@sec.gov

RE: File No. S7-21-21; Share Repurchase Disclosure Modernization

Dear Ms. Countryman:

Norfolk Southern Corporation (NYSE: NSC) (hereinafter referred to as “Norfolk Southern”) is one of the nation’s premier transportation companies. Its Railway Company subsidiary operates approximately 19,500 route miles in 22 states and the District of Columbia, serves every major container port in the eastern United States, and provides efficient connections to other rail carriers. Norfolk Southern is a major transporter of industrial products, including chemicals, agriculture, and metals and construction materials. In addition, the railroad operates the most extensive intermodal network in the East and is a principal carrier of coal, automobiles, and automotive parts.

Norfolk Southern writes regarding the Securities and Exchange Commission’s (“SEC”) February 15, 2022, proposed rule regarding disclosures about repurchases of an issuer’s equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 (“Proposed Rule”). The Proposed Rule adds a requirement for daily disclosure of share repurchases and expands the existing disclosures that are currently included in Forms 10-Q and 10-K. As further explained below, the increased reporting requirements in the Proposed Rule are likely to cause harm to long-term shareholders and companies, are excessively transparent to a harmful degree, unduly burdensome, and unnecessary.

Daily Trade Reporting Is Excessive and Thus Harmfully Transparent

Daily trade reporting through the implementation of a new Form SR would be overly transparent and could cause harm to long-term shareholders. Daily reporting requirement would allow hedge funds and other sophisticated traders to reverse engineer significant elements of applicable pricing grids or other algorithms to determine the amount and timing of repurchases

and may tip off the market about a company's multi-day repurchase strategy before it is complete. Further, short-term traders could scrutinize repurchase patterns from those daily disclosures of repurchases and if there is a pause or significant drop in the buyback program, speculate that the company is holding material non-public information, thus fueling market rumors and stock volatility. Such visibility and deductive reasoning would clearly benefit those who trade against the company to the detriment of the company and other shareholders who lack the resources to equally mine and study the voluminous disclosures, fueling baseless securities litigation against the company. Daily reporting would essentially tilt the playing field against the company and its long-term shareholders, making it difficult for prospective investors to digest weighty data and would create additional noise in the company's disclosures without providing meaningful information to investors.

Additionally, the implementation of the Proposed Rule would conflict management's attention between signaling to the markets and responsibly managing liquidity.

Daily Trade Reporting Is Unduly Burdensome

The administrative execution of the proposed one-day reporting would be unduly burdensome in that companies would be required to furnish the Form SR to the SEC by the end of the first business day following any day on which the issuer executed share repurchases. For companies who are in the market daily, this one-day reporting requirement creates an administrative nightmare. Given the breadth of the information required, one-day reporting would undoubtedly lead to errors in reporting because of the time differential between sale and settlement. Often, settlement information is not available for two days after repurchasing and one-day reporting makes it near impossible for companies to adequately confirm reporting accuracy as errors are common in initial reports from trading firms.

One-day reporting would be more onerous than other SEC disclosure periods. Specifically, Form 4 has a two-day disclosure period; Form 8-K has a four-day disclosure period; Schedule 13D has a 10-day disclosure period; and Form 13F is required 45 days after the end of a quarter.

Additionally, time and cost implications should also be considered. The 1.5 hours per day preparation time estimated by the SEC quickly turns into 7.5 hours a week, or more for those who are in the market daily, for the duration of the share repurchase plan. Companies would have to incorporate new filings into their disclosure controls and procedures to ensure timely, accurate reporting, which would drive up the cost for the company. Over time, the daily information would become superfluous while companies would still be required to invest valuable time and money into compliance.

Enhanced Periodic Disclosures Are Overly Transparent

Norfolk Southern additionally believes that the enhanced periodic disclosure requirement in the Proposed Rule is overly transparent and potentially harmful in that it will require companies to either disclose sensitive strategic information or risk inaccurate or

incomplete disclosure. The disclosure of objectives or rationale for repurchasing shares and the process or criteria used to determine the number of shares to be repurchased, in addition to the other required information could lead to the exposure of sensitive information to competitors and others. Issuers may be out of the market due to a myriad of valid strategic or liquidity-related reasons. Premature disclosures regarding this type of strategic decision-making on the part of the company would be harmful and unnecessary.

Existing SEC Rules Are Sufficiently Protective

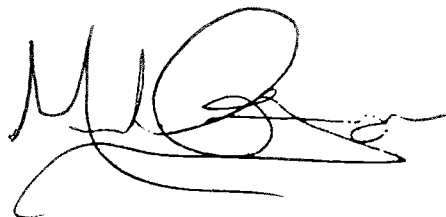
If adopted in its current form, the Proposed Rule would be a significant departure from established practice in disclosure of share repurchase plans. Under current rules, companies, as issuers repurchasing their own equity securities registered under Section 12 of the Securities Exchange Act of 1934 (Exchange Act), must report repurchases on a quarterly basis via Form 10-Q and annually via Form 10-K. Item 703 of Regulation S-K requires companies to report the monthly repurchase amount, the average price paid per share, the number of shares purchased, and the number of shares allowed to be repurchased under previously announced plans. The current required disclosure is sufficient to provide meaningful information to investors rendering the Proposed Rule unnecessary. Also, it is common practice for companies to issue a press release at the outset of a share repurchase program, indicating either a dollar amount or share number to the market that the company intends to repurchase.

In addition, if the SEC is concerned about market manipulation, current Rule 10b-18 already exists to keep companies who are repurchasing from distorting the markets. The SEC has addressed both transparency and market manipulation concerns to sufficiently protect investors with respect to company share repurchases.

The SEC has recently discussed its desire to be responsive to the evolving needs of shareholders with respect to its disclosure requirements. Though we have heard from many of our shareholders through our robust engagement program regarding their interest in our ESG-related disclosures, none of our shareholders have expressed interest in knowing more granular information about share repurchases, nor have they expressed any concern about our share repurchase strategy, which is a straightforward vehicle to return capital to shareholders on top of our normal dividend program. Contrary to its mission, the SEC would be making markets less efficient by requiring this type of information.

Norfolk Southern respectfully requests that the SEC reevaluate the Proposed Rule and examine the potential hardships versus the benefits that would flow from the Proposed Rule as drafted. I thank you for the opportunity to provide Norfolk Southern's comments on this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to be 'M. Countryman', written over a horizontal line.