



VIA E-MAIL (rule-comments@sec.gov)

April 1, 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) and
Rule 10b5-1 and Insider Trading (File No. S7-20-21)**

Dear Ms. Countryman:

On December 15, 2021, the Securities and Exchange Commission (the “Commission”) issued requests for public comment soliciting input on proposed rule amendments to (i) modernize and improve disclosure about repurchases of an issuer’s equity securities that are registered under the Exchange Act (the “Share Repurchase Disclosure Proposal”) and (ii) add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1), as well as new disclosure requirements regarding insider trading and the timing of equity compensation awards made in close proximity to the disclosure of material non-public information, and also make certain changes to the reporting requirements under Section 16 of the Exchange Act (the “Rule 10b5-1 and Insider Trading Proposal” and together with the Share Repurchase Disclosure Proposal, the “Proposals”). The Rule 10b5-1 Proposal was subsequently reissued on January 13, 2022. FedEx Corporation (“FedEx”) respectfully submits this comment letter to the Commission in response to the Proposals.

FedEx is a global company that provides customers and businesses worldwide with a broad portfolio of transportation, e-commerce and business services. Our annual revenues total approximately \$92 billion, we have nearly 600,000 team members, and we serve customers in more than 220 countries and territories. Our common stock, which is listed on the New York Stock Exchange, has nearly 12,000 holders of record. We present our views from the perspective of a preparer of disclosures required to be filed with the Commission and as a large accelerated filer registered with the Commission.

FedEx has been a core component of many investor’s retirement strategies for over 40 years, and share repurchases are an integral piece of our capital allocation strategy. Since fiscal 2014, we have returned more than \$18.5 billion to our stockholders through share repurchases and dividends. We promote full and accurate disclosure in our public communications and in the reports and documents we file with the Commission and other regulatory authorities, including disclosures regarding our share repurchase and other capital allocation strategies. Additionally, we are committed to respecting the role of FedEx in the marketplace and have established

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policies that prohibit the company and its directors, officers, and employees from transacting in FedEx securities while in the possession of material non-public information.

The Share Repurchase Disclosure Proposal

As previously stated in responses to Commission requests for comment, FedEx believes that prescriptive disclosure requirements can elicit information that is not material to investors, obscure material information, and be costly to provide. Such consequences run counter to the Commission's undertaking to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. We believe these concerns are prevalent in the provision included in the Share Repurchase Disclosure Proposal requiring companies to report information about a share repurchase on a new "Form SR" within one business day of the transaction. In addition to being unduly burdensome for issuers, daily reporting of share repurchase transactions would inundate investors with granular information subject to otherwise unfounded speculation regarding the future plans of public companies, which could lead to investment decisions that are harmful to stockholders. Daily share repurchase information could also be used by professional investors to trade against companies to the detriment of issuers and their long-term stockholders.

FedEx encourages the Commission to consider alternatives to the required daily disclosure of share repurchase transactions. For example, the detailed quarterly disclosure of an issuer's share repurchase activity currently mandated by Item 703 of Regulation S-K could be supplemented by a requirement to file a current report on Form 8-K when share repurchase activity subsequent to a company's most recent periodic report on Form 10-K or Form 10-Q reaches a certain level, similar to the disclosure requirement regarding unregistered sales of equity securities currently set forth in Item 3.02 of Form 8-K. Such a disclosure regime would strike the appropriate balance of providing decision-useful information to investors without overwhelming markets with daily repurchase information subject to misinterpretation and trading strategies adverse to the interests of companies and the majority of their stockholders.

If the Share Repurchase Disclosure Proposal is adopted substantially as proposed, FedEx encourages the Commission to provide additional guidance on how the daily share repurchase disclosure requirement would apply with respect to certain transactions and strategies in which public companies commonly engage, including accelerated share repurchases ("ASRs").

The Rule 10b5-1 and Insider Trading Proposal

FedEx believes that the 30- and 120-day "cooling-off" periods for issuer/director and officer trading arrangement plans included in the Rule 10b5-1 and Insider Trading Proposal are excessive and duplicative, as current law conditions the affirmative defense under Rule 10b5-1(c)(1) on an issuer or insider not being in possession of material non-public information at the time of adopting a trading arrangement plan. FedEx has policies and procedures in place that set forth the practices to be followed by FedEx and its directors, officers, and employees when engaging in transactions involving FedEx securities. These policies and procedures prohibit trading while in possession of material non-public information and subject FedEx, its directors

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and officers, and certain other employees with access to material non-public information to recurring quarterly quiet periods, which run from the 15th day of the third month of each fiscal quarter through the day after quarterly earnings are released to the public after the end of the quarter. No trading arrangement plan may be adopted during a quiet period, and no trades in FedEx securities other than pursuant to a trading arrangement plan specifically authorized outside of a quiet period can be made by FedEx or the individuals referenced above during a quiet period.

Given the current legal backdrop, a strict 30-day cooling-off period for issuer trading arrangement plans would needlessly limit the flexibility of issuers to pursue their capital allocation strategies and increase the complication and expense related to certain transactions, including ASRs. Further, a 120-day cooling-off period for director and officer trading arrangement plans would reduce the attractiveness of equity compensation, which helps to align the interests of directors and officers with a company's stockholders. The prohibition on overlapping trading arrangement plans included in the Rule 10b5-1 and Insider Trading Proposal would also preclude issuers from completing otherwise legitimate and commonly executed transactions, including multi-dealer, alternating-day ASRs and ASRs executed concurrently with an agency open-market repurchase plan. FedEx encourages the Commission to consider these effects of the Rule 10b5-1 and Insider Trading Proposal and ensure that any final rule adopted not discourage or prohibit non-abusive transactions and compensation arrangements that benefit issuers and their stockholders.

Finally, FedEx believes that certain of the disclosure requirements included in the Rule 10b5-1 and Insider Trading Proposal would unnecessarily discourage issuers from pursuing legitimate capital allocation strategies and complicate executive compensation practices, all the while failing to provide material information to investors. Requiring issuers to disclose specific information regarding trading arrangement plans before trades are executed could expose potentially sensitive information to the market. Additionally, the proposal to mandate proxy statement disclosure of stock option and similar awards granted to named executive officers within 14 days of the release of material non-public information fails to take into account that grant dates for regular equity awards are established by FedEx and many other issuers years in advance and often coincide with Board of Directors and compensation committee meetings. Such a disclosure requirement would place a significant administrative burden on the management and directors of these issuers without contributing to the protection of investors.

In conclusion, FedEx supports the Commission's continual review of disclosure requirements and other rules to ensure that investors receive decision-useful information and market integrity remains intact as facts and circumstances evolve. However, we urge the Commission to weigh the adverse effects that the provisions of the Proposals discussed above will have on capital allocation flexibility for issuers, investor protection, and equity compensation practices against the minimal incremental benefits the Proposals will provide in light of current legal requirements and issuer practices as it considers the adoption of final rules.

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We sincerely appreciate your consideration of our comments. If you would like more information, please feel free to contact me at your convenience.

Sincerely yours,

FedEx Corporation

A handwritten signature in blue ink, appearing to read 'M. R. Allen', with a long horizontal flourish extending to the right.

Mark R. Allen

cc: Michael C. Lenz
Jennifer L. Johnson
Clement E. Klank III
Guy M. Erwin II
Arthur M. Foster
Alana L. Griffin
John D. Hartney

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