



April 1, 2022

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

**Re: Share Repurchase Disclosure Modernization (Release Nos. 34-93783, IC 34440;
File No. S7-21-21)**

Dear Ms. Countryman:

The American Securities Association (ASA)¹ writes to express our concerns over the recent rule proposal from the Securities and Exchange Commission (SEC) regarding share buybacks conducted by public companies (Proposal).

While the ASA has long been supportive of greater transparency in our capital markets, the Proposal contains many costly and unwarranted provisions, as it embraces a misguided perception about the utility of stock buybacks, and represents an effort to use the SEC's disclosure regime to change corporate behavior.

Congress has not given the SEC the legal authority to change corporate behavior. Agreeing with a vocal minority that seeks to use shareholder money to change society is not a legal basis for the SEC to use to make policy. To be clear, this Proposal would directly harm the interests of America's mom-and-pop investors and retirement savers, while incentivizing short-termism in the equity markets.

I. The SEC must consider the cumulative impact of recent rule proposals and provide the public with sufficient opportunity to comment.

The ASA is concerned that the Proposal represents just one of the many complex, consequential, and interrelated rule proposals the SEC has issued in recent months. The SEC currently has fourteen (14) rule proposals out for public comment, *none* of which are required by law.

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





Many of these proposals are hundreds of pages in length, include hundreds of questions and topics for comments to consider, have extremely short comment periods, and collectively impact nearly every aspect of our capital markets. To date, the SEC has not conducted any type of comprehensive economic or other analysis about the potential costs of these combined rules or how they will impact retail investors, the ability of businesses to raise capital, market integrity, or systemic risk.

Even more troubling, the SEC continues to provide an insufficient amount of time for the public to provide input on these proposals, providing at *most* sixty (60) days in many cases. The ASA wrote to the SEC in December 2021 stating our view that “condensed timeframe[s] could limit the amount of thoughtful public input that is possible to be submitted by the comment period deadline.”²

Robust public input leads to better informed rulemaking and minimizes the possibility that the SEC will have to revisit many of these rules once they are finalized to correct unintended consequences.

We echo the statement made recently by Commissioner Peirce in response to the SEC’s proposal on the definition of dealer and government securities dealer that commenters may not have an adequate amount of time to consider how certain proposals might affect, or be affected by, other outstanding proposals.³ We therefore urge the SEC to extend the comment periods for every outstanding proposal by a minimum of sixty (60) days and to conduct a comprehensive examination of the cumulative impact of all the new regulations it is considering.

II. The Proposal subordinates the interests of and harms mom and pop investors.

Businesses of all sizes must make regular decisions about how to allocate capital in the most productive way on behalf of their shareholders. Sometimes a business may decide that investing in new capital projects or research and development (R&D) is the best way to increase long-term returns for shareholders. Other times, a business may decide to return capital to shareholders in the form of dividends or share buybacks. Each of these decisions involve a thorough analysis and review process by management and approval by the board of the respective company.

Share buybacks benefit shareholders and improve the long-term competitive position of businesses.⁴ Unfortunately, share buybacks have become the subject of misguided and ill-informed political criticism in recent years.

² <https://www.americansecurities.org/post/asa-calls-on-sec-to-extend-comment-period>

³ <https://www.sec.gov/news/statement/peirce-statement-proposal-further-define-dealer-032822>

⁴ <https://business.vanderbilt.edu/news/2021/11/12/new-research-shows-stock-buybacks-have-a-positive-impact-on-stock-price-stabilization/>





Buybacks have been attacked as diverting capital away from other purposes deemed more 'worthy' by those who favor a central planning approach to capital allocation in our economy. This approach subordinates and undermines the interests of America's shareholders, pensioners, and others that rely on public companies to produce long-term sustainable returns over time.

The Proposal appears to create a new role for the SEC as a central planner of share buybacks. Under the guise of 'disclosure,' it would likely disincentivize public companies from engaging in buybacks and subject those who continue them to politicized criticism over their capital allocation decisions.

There is no clear benefit to shareholders for either next-day reporting of share buybacks, or to provide the "objective or rationale" along with the criteria used by companies for their share buyback program. These requirements would create unnecessary noise in the market and allow politicians and special interest groups to second guess decisions made by corporate boards.

Even worse, this policy would *increase* the amount of 'short-termism' in our markets as hedge funds and others looking to make quick trading profits would zero in on any company who didn't make a next day filing to benefit from the artificial volatility created by the next-day filing requirement. This certainly would not serve the interests of long-term investors. We remind the agency that neither of the SEC's authorizing statutes establish a mission for the SEC to create short-term trading opportunities for hedge funds at the expense of America's retail investors.

Shareholders own the corporation, and it is their money they want returned to them. A government rule that creates false market signals leading to stock price volatility will reduce the returns on their money. The SEC has no authority to create this outcome and has failed to justify why it is necessary.

III. Conclusion

Federal Reserve data indicates that households headed by individuals over the age of 55 own over 70 percent of the value of U.S. domestic stocks.⁵ The SEC must remember that it is these households – at or near retirement – that will suffer the most if policymakers severely limit the ability of businesses to return money to shareholders through buybacks or dividends. These kinds of policies *directly target* the savings of every American shareholder who uses or plans to use stock ownership to fund their retirement.

Accordingly, we urge the SEC to refrain from making political decisions that reside with Congress and cease its work on this misguided Proposal. The agency should pursue policies that

⁵ "2016 Federal Reserve Survey of Consumer Finances" <https://www.federalreserve.gov/econres/scfindex.htm>





american securities association

America's Voice for Main Street's Investors

prioritize the interests of America's shareholders and stay out of public company capital allocation decisions.

As James Madison wrote in Federalist 47, "[t]here can be no liberty where the legislative and executive powers are united in the same person." If the SEC continues to act outside the scope of its legal authority, then those impacted by its continually overreach will have no choice but to turn to the courts to restrain the agency's ambitions and political forays.

The ASA looks forward to working with the SEC and staff on proposals currently before the SEC.

Sincerely,

Christopher A. Iacovella

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