



April 1, 2022

Via e-mail to rule-comments@sec.gov

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); Rule 10b5-1 and Insider Trading (Release Nos. 233-11013, 34-93782; File No. S7-20-21)

Dear Ms. Countryman:

On behalf of the Pennsylvania Chamber of Business and Industry, the largest broad based business advocacy association in the Commonwealth of Pennsylvania, we appreciate the opportunity to provide comment on 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" or "Proposal").¹

A core tenant of robust capital markets is the flexibility for enterprises to raise capital, invest, and then return capital to investors in a variety of means. Public companies have two means of returning capital to its shareholders: paying dividends and reducing share count via share repurchases. Corporate share repurchase programs are an important and established tool used by companies to return value to its owners. As such, our members expressed concern in the Commission implementing rules that deter or penalize companies that use one method of shareholder return versus another.

Our members have raised numerous issues with the Commission's Proposal and have concerns that its overburdensome reporting requirements and expected increase in market volatility could discourage the utilization of future share repurchase programs, citing that the proposed changes would create significant negative unintended consequences and do not accomplish the rules'

¹ Share Repurchase Disclosure Modernization, 87 Fed. Reg. 8443 (Feb. 15, 2022) (hereinafter, "Proposed Rule").

stated objectives. We encourage the commission to consider if the Proposal deters companies from pursuing share repurchases, thus penalizing the shareholders the Commission intends to protect.

With respect to the proposed rule changes, our members have two broad concerns that we wish to highlight:

The primary beneficiary of the Proposed Rules are hedge funds. Long-term investors (retail investors, pension funds, endowments, mutual funds, insurance companies) will find little to no value from the proposal and may be negatively impacted by increased market volatility from the daily issuer reporting requirement.

1. Our members expect increased share price volatility from daily share repurchase reporting. Volatility is the key component for the profitability of high-turnover market participants such as hedge funds and is widely recognized as a value detraction for long-term investors. We expect that changes in purchase levels reported on a daily basis could be incorrectly interpreted as management's daily changing view on the prospects and the value of its company, which will in turn influence market trading activity and increase volatility. The increased volatility leads to greater profit opportunities for fast-money market participants at the cost of long-term shareholders while also increasing the cost of capital for businesses.
2. By requiring issuers to report daily share repurchase activity, sophisticated market participants will be able to reconstruct an issuer's 10b5-1 purchase instructions to its broker (essentially the limit order share price and quantity of an unaffiliated market participant) and take advantage of that information for short term trading profits. The transparency is a boon for hedge funds and the like to have knowledge of buying support at certain share price levels, but provides little incremental usable information above what's currently required (monthly reporting in 10-Qs and 10-Ks) to the long-term investors. Moreover, creating this advantage for short-term investors may ultimately cause long-term investors to incur harm, undermining the very investor protections the Commission seeks to implement.

The proposed rules attempt indirect regulation of corporate activity by means of disclosure rules.

1. A recurring theme in the proposed rule concerns share repurchases used for earnings management and influencing executive compensation. Currently, existing SEC proxy rules lay out in granular detail the components of Executive and Board compensation. Existing quarterly share repurchase reporting rules provide all of the relevant details for investors to evaluate the impact of shareholder returns on compensation. Issues pertaining to individual company corporate governance and shareholder alignment should be handled via shareholder rights instead of commission rules.
2. Existing rules require issuers to file Form 8-K current reports for the timely reporting of material corporate events relevant to shareholders 10b5-1 and 10b-18 currently prohibit

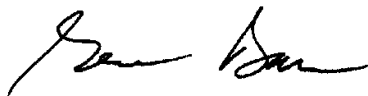
trading with material non-public information. If there are Commission concerns with share repurchase impropriety, it currently has the laws and rules in place to pursue these concerns without additional requirements.

3. A large portion of issuers do not have the business model to make shareholder returns entirely or even partially via dividend and therefore rely on share repurchases as the sole method of shareholder return. As such, these issuers invest a great deal of time into evaluating and designing share repurchase programs to optimize shareholder value. The imbedded deterrence and cost of the Proposed Rules will unfairly land on such companies that rely on share repurchases as its efficient and rational means of investor return.
4. The Commission's share repurchase rule cannot be considered in isolation with other proposals currently before the Commission, particularly including the Commission's Rule 10b5-1 and insider trading proposal. Consequently, the 10b5-1 proposed rulemaking proposes a 30 day cool off and elimination of overlapping affirmative defense, which will limit issuers to 10b5-1 purchases only half the year (one out of two months), reducing both market liquidity for selling shareholders and reducing issuers' capital management opportunities and long-term shareholder returns.

Conclusion

The Pennsylvania Chamber of Business & Industry appreciates the opportunity to comment on the Proposal. While we support the commission's intent to deter those who engage in illegal activity with this proposal, it is our position that the existing disclosure and share repurchase rules provide the appropriate amount of transparency and serve as an effective means for the Commission to investigate and enforce concerns of market manipulation or general impropriety of an issuer. Regulations must not serve to restrict the allocation of capital and increase volatility, but should be structured to adequately disclose company activity in a balanced and pragmatic manner that encourages fair, efficient, and robust capital markets without being unnecessarily burdensome.

Sincerely,



Gene Barr
President & CEO
Pennsylvania Chamber of Business & Industry