

April 1, 2022

***Via Online Form Submission***

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re:** File No. S7-21-21, Comments to Proposed Amendments to Modernize Disclosure of Share Repurchases

Dear Ms. Countryman,

The following comments are submitted by International Bancshares Corporation (“IBC”), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 170 facilities and 263 ATMs, serving 76 communities in Texas and Oklahoma through five separately state-chartered banks ranging in size from approximately \$474 million to \$9.5 billion, with consolidated assets totaling over \$16 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the request of the Securities and Exchange Commission (the “SEC”) for comment on its proposal to amend issuers’ disclosure obligations concerning share repurchases by: (i) implementing a new form SR that issuers would be required to furnish to the SEC within one business day after executing a buyback order; (ii) requiring issuers to report additional details about the structure of their repurchase programs and buybacks under an amended Item 703; and (iii) mandating issuers’ use of Inline eXtensible Business Reporting Language to report information disclosed under Item 703 of Regulation S-K and pursuant to Form SR (collectively, the “Proposal”). For the following reasons, IBC is opposed to the SEC’s proposed rule.

**I. The Proposal’s attempt to lessen informational asymmetry by focusing on issuers’ share repurchase programs is misguided. The proposed rule should be aimed at combatting nefarious short-selling and dark-pool practices, which operate covertly and dismantle market stability.**

The principal tenet of the corporate model is corporate leaders’ responsibility to their shareholders. Managing a company’s capital is a critical element of managing a company for its shareholders. While the Proposal pushes the narrative of social responsibility,

which can vary dramatically over time, it seems to ignore the primary responsibility of maximizing returns that corporations owe to their shareholders.

Instead of over-regulating corporate constituents and inhibiting their ability to return capital to shareholders through well-managed corporate buyback programs, the SEC should allow shareholders to hold bad actors accountable. If executives and insiders abuse the system, it should be shareholders' responsibility and right to rein them in by voting them out and taking actions against the corporate board of directors when necessary to redirect the company's path. The shareholders of a corporation know their corporation and its executives best. Shareholders, not a global market regulator, are in the best position to combat insider trading with the corporate, governance, and legal tools already accessible to them.<sup>1</sup>

In contrast, shareholders are not equipped to address the pervasive fraud and manipulation that short sellers commit in the marketplace. Deceptive practices such as naked short selling,<sup>2</sup> "short-and-distort" schemes,<sup>3</sup> and dark-pool trading<sup>4</sup> allow short sellers to exploit investors' loss by profiting from artificially manipulated stock prices.<sup>5</sup> Reining in short seller's nefarious practices is a task exclusively within the SEC's purview. The SEC recently acknowledged "that certain short selling activity can be carried out pursuant to potentially abusive or manipulative schemes[.]" such as "market manipulators . . . seek[ing] to spread false information about an issuer whose stock they sold short in order to profit from a resulting decline in the stock price" or "illegally manipulat[ing] stock prices" through tactics "such as 'bear raids.'"<sup>6</sup> Despite that

---

<sup>1</sup> See Comm'r Hester Peirce, Dissenting Statement on Buybacks Disclosure Proposal (Dec. 15, 2021), <https://www.sec.gov/news/statement/peirce-buyback-20211215> ("Opposition to buybacks is often rooted in the idea that surplus corporate cash ought to be reinvested in the company . . . rather than being returned to shareholders. Such an argument assumes that the politician, regulator, or academic making it is in a better position than management to assess corporate opportunities and determine appropriate levels of cash in company coffers.").

<sup>2</sup> See Litigation Release No. 25092: SEC Charges Broker Dealer with Order Execution Violations (May 20, 2021), available at <https://www.sec.gov/litigation/litreleases/2021/lr25092.htm> (discussing a broker dealer's repeated naked short selling in violation of Rules 200(g) and 203(b)(1) of Regulation SHO).

<sup>3</sup> See Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Hedge Fund Adviser With Short-and-Distort Scheme (Sept. 12, 2018), available at <https://www.sec.gov/news/press-release/2018-190> (summarizing the SEC's complaint against a hedge fund adviser for participating in a typical short-and-distort scheme by establishing a short position in a company then "ma[king] a series of false statements to shake investor confidence in [the company], lower its stock price, and increase the value of his position").

<sup>4</sup> See Luis A. Aguilar, Comm'r, U.S. Sec. & Exch. Comm'n, Public Statement: Shedding Light on Dark Pools (Nov. 18, 2015), <https://www.sec.gov/news/statement/shedding-light-on-dark-pools.html> (warning of the dangers of alternative trading system "dark pools" that meet "institutional investors' growing need to trade large blocks of stock without causing markets to move against them" by "offering ever more trading on an anonymous basis, and without displaying specific order information before trades occur").

<sup>5</sup> See *generally* Letter from Dennis Nixon, President & Chief Exec. Officer, Int'l Bancshares Corp., to FINRA (Sept. 27, 2021), [https://www.finra.org/sites/default/files/NoticeComment/Dennis%20Nixon%20%28IBC%29%20-19\\_9.27.2021.pdf](https://www.finra.org/sites/default/files/NoticeComment/Dennis%20Nixon%20%28IBC%29%20-19_9.27.2021.pdf).

<sup>6</sup> Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-94313, 87 Fed. Reg. 14950, at 14953 (Mar. 16, 2022) (citing Proposed Rule: Short Sales, Exchange Act Release No. 48709, 68 Fed. Reg. 62972 (Nov. 6, 2003) [hereinafter 2003 Proposal]). The 2003 Proposal describes a bear raid as occurring "where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest." 2003 Proposal, at 62974.

acknowledgment, the Proposal will facilitate short sellers' abusive practices. The information that issuers would have to report under new Exchange Act Rule 13a-21 and Form SR is precisely the type of information that short sellers can manipulate to better manage their short positions and avoid losses that might occur because of a buyback.<sup>7</sup>

## **II. Buyback programs are an integral component of issuers' capital-allocation strategy. The Proposal will inhibit corporations' ability to utilize buybacks as a means of shareholder return.**

Despite share repurchases being a well-established strategy for corporations to return capital to investors, the decision to engage in buybacks has become a political issue widely debated by financial media outlets and politicians.<sup>8</sup> Commentators more concerned with social-justice initiatives and pushing political agendas than maximizing shareholder returns have turned buybacks into a sort of boogeyman, pointing to buybacks as evidence of share-price manipulation and corporate greed.

The SEC seems to accept the unfounded, broad connotation of buybacks with opportunistic corporate behavior,<sup>9</sup> as it justifies the Proposal based on: "some research . . . show[ing] that repurchases can serve as a form of real earnings management . . . and thus be subject to short-term earnings management objectives of an executive seeking to meet or beat consensus forecast"; the assumption that the potential "short-term upward price pressure" from announcing repurchases or completing repurchase trades "incentive[s] executives to undertake repurchases in an attempt to maximize their compensation";<sup>10</sup> and commentators' concerns of "the opportunistic and harmful use of issuer share repurchases by issuer insiders"<sup>11</sup> potentially "as a tool to raise the price of an issuer's stock in a way that allows insiders and senior executives to extract value from the issuer instead of using the funds to invest in the issuer and its employees."<sup>12</sup>

---

<sup>7</sup> See Comm'r Elad L. Roisman, Dissenting Statement on Proposed Rules Regarding Share Repurchases (Dec. 15, 2021), <https://www.sec.gov/news/statement/roisman-buybacks-20211215> (stating Commissioner Roisman's concerns that "the proposed daily activity reports could provide a roadmap for traders to figure out [a] company's upcoming trades and trade ahead of them[.]" which "would artificially raise the stock price for everyone and reduce market efficiency").

<sup>8</sup> *Id.* ("Buybacks have grown to be a political hot button issue.").

<sup>9</sup> Share Repurchase Disclosure Modernization, Release Nos. 34-93783, 87 Fed. Reg. 8443, at 8444–45 (Feb. 15, 2022).

<sup>10</sup> *But see* Tom Quaadman, *3 Things You Need to Know About Stock Buybacks*, U.S. CHAMBER OF COMM. (Oct. 28, 2021), <https://www.uschamber.com/finance/3-things-you-need-to-know-about-stock-buybacks> ("Stock buybacks benefit everyday Americans and retirement account holders, not just company executives. . . . Shareholders often reinvest gains from buybacks into growing new businesses and creating jobs, which means that proposals to restrict or discourage buybacks would ultimately be detrimental to American families and the U.S. economy.").

<sup>11</sup> *But see* Sirio Aramonte, *Mind the Buybacks, Beware of the Leverage*, BANK FOR INT'L SETTLEMENTS (Sept. 14, 2020), [https://www.bis.org/publ/qtrpdf/r\\_qt2009d.htm](https://www.bis.org/publ/qtrpdf/r_qt2009d.htm) ("Ultimately, if repurchases mainly reflected managerial opportunism and were thus detrimental to investors, they would entice negative market reactions over the long run. There is little evidence that this has been the case. After accounting for broad risk factors, long-term stock returns are typically positive following buyback announcements and higher than for non-repurchasers . . .").

<sup>12</sup> *But see* Jesse M. Fried & Charles C.Y. Wang, *Are Buybacks Really Shortchanging Investment?*, HARV. BUS. REV., Mar.-Apr. 2018, at 9 ("There is little evidence that buybacks and dividends by the S&P 500 are hurting the economy by depriving firms of capital they would otherwise use for investment and paying workers. Far from

Yet much of the support relied on by the SEC in making the foregoing assertions is politically motivated<sup>13,14</sup> and fails to recognize the paradigm of shareholder primacy that

---

being starved of resources, S&P 500 companies are at near-peak levels of investment and have huge stockpiles of cash available for even more. Our analysis shows that the proportion of income available for investment that went to shareholders of the 500 over the past 10 years was a modest 41.5%—Less than half the amount claimed by critics. . . . There may well be severe corporate governance problems in the S&P 500, but the data suggests that excessive shareholder payouts is not one of them.”).

<sup>13</sup> See *id.* at 8445 n.13-16. For example, as support for the claim that “[s]ome research has shown that repurchases can serve as a form of real earnings management . . . and thus be subject to short-term earnings management objectives of an executive seeking to meet or beat consensus forecasts[,]” the SEC cites a petition to revise Rule 10b-18 that was signed by various social-justice organizations with anti-capitalist political agendas. Rulemaking Petition 4-746 (June 25, 2019), Rulemaking Petition Requesting Repeal and Reform of Rule 10b18 to Address Manipulative Repurchase Programs that Harm Workers, available at <https://www.sec.gov/rules/petitions/2019/petn4-746.pdf>, at 4 [hereinafter Petition 4-746]. Some of the petition signees included:

- (i) The Action Center on Race & the Economy (ACRE), which describes itself as a “campaign hub for organizations working at the intersection of racial justice and Wall Street accountability” that provides “strategic support for organizations working on campaigns to win structural change by directly taking on the financial elite” while “approach[ing] all of [its] work through an explicit racial lens.” *What is ACRE*, ACRE, <https://acrecampaigns.org/about/> (last visited Mar. 30, 2022);
- (ii) The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which lists “Corporate Greed” as one of its nine objectives, advocates that “[w]e cannot allow corporate greed to go unchecked” or “the interests of the rich and powerful to dictate policies that have such profound effects on working families[,]” and states that it will “continue to campaign for increased corporate accountability, be the leading voice in reining in executive pay and advocate for sensible tax policies that make sure corporations pay their fair share.” *Corporate Greed*, AFL-CIO, <https://aflcio.org/issues/corporate-greed> (last visited Mar. 30, 2022);
- (iii) The Center for Popular Democracy, which states that it “works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions[,]” “strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda[,]” “builds the power of communities to ensure the country embodies our vision of an inclusive, equitable society . . . supported by a resilient economy and political institutions that reflect our priorities[,]” and “fights to advance our transformative vision of a more just, healthy, joyful world” through “campaigns [that] seek to confront deep structural problems that challenge our ability to achieve our vision (e.g., white supremacy, corporate power).” *About Us*, CTR. FOR POPULAR DEMOCRACY, <https://www.populardemocracy.org/about-us> (last visited Mar. 30, 2022); and
- (iv) Take on Wall Street, a “campaign [that] was launched in the spring of 2016 out of a broad consensus among community organizations, labor unions, consumer activists, and faith groups that while the Dodd–Frank Wall Street reforms put in place after the financial crisis were critically important, they simply didn’t go far enough[,]” which aims to “address the predatory economic power of **big Wall Street banks** and billionaires” and carry out its mission “to envision a better financial system together, train activists, cultivate political champions, and deliver policy change to restore the financial sector to its rightful place in service of the real economy.” *About Take on Wall Street*, TAKE ON WALL ST., <https://takeonwallst.com/about/about-tows/> (last visited Mar. 30, 2022).

<sup>14</sup> See *id.* at 8445 n.13-16. For example, as support for the claim that “[s]everal commentators have highlighted what they viewed to be the opportunistic and harmful use of issuer share repurchases by issuer insiders[,]” the SEC relies in part on an article sharing the views of Senator Elizabeth Warren that share buybacks are merely “market manipulation made to inflate executive pay.” Thomas Franck, *Elizabeth Warren Rips Stock Buybacks as ‘Nothing but Paper Manipulation’*, CNBC: POLITICS (Mar. 2, 2021), <https://www.cnbc.com/2021/03/02/elizabeth-warren-rips-stock-buybacks-as-nothing-but-paper-manipulation.html>. Senator Warren describes herself as “one of the nation’s leading progressive voices[.]” *About Elizabeth*, ELIZABETH WARREN, <https://www.warren.senate.gov/about/about-elizabeth> (last visited Mar. 30, 2022).

directors are legally bound to uphold.<sup>15</sup> The appropriate use of share repurchases to manage capital is a tool that must be preserved and not inhibited by the social or political goals of the members of the SEC, particularly since such social and political motivations are often shifting, unstable, and unpredictable. There are many reasons why a company might decide to execute a buyback based on long-time well established financial principles, “including that the board believes the company has excess cash, which the shareholders can make better use of directly, or the company’s shares are undervalued in the market.”<sup>16</sup>

The Proposal ignores the several valid, time-honored reasons why companies partake in share repurchases, focusing exclusively on the murky claims that buybacks are motivated by corporate greed and the political narrative that buybacks inhibit investment in a company’s business and employees. Furthermore, the Proposal ignores the SEC’s own recent conclusions that: “at least on average, repurchases are viewed as having a positive effect on firm value”; its “findings potentially suggest that most repurchase activity does not represent an effort to artificially inflate stock prices or influence the value of option-based or EPS-linked compensation”; and “repurchases may be a tool to help companies achieve target levels of leverage and cash holdings.”<sup>17</sup> Though called “enhancements,” the proposed disclosure requirements are unduly burdensome, restrictive, and cost-ineffective. The inflexibility of the Proposal will make corporations’ use of buyback programs difficult if not impossible. Furthermore, as set forth in our comment letter to the SEC regarding its recent proposal on Rule 10b5-1 and Insider Trading (File No. S7—20-21), such proposal would limit issuers’ ability to react appropriately to non-material non-public information developments, and the unavailability of 10b5-1 plans would significantly curtail a financial institutions ability to execute share repurchases at all during certain periods.

Perversely, the combination of these two proposals would drastically inhibit financial institutions’ ability to use share repurchases as a regular and predictable means of returning capital to shareholders, and would, therefore, incentivize financial institutions to rely more heavily on dividend distributions, which would not present the same practical challenges and limitations, which blatantly contradicts longstanding Federal Reserve policy to encourage firms to use share repurchases rather than dividends distributions.<sup>18</sup> As stated in the Bank Policy Institute’s and the American Bankers Association’s comment letter (the “BPI/ABA Letter”) on this Proposal, the Federal Reserves’ policy:

---

<sup>15</sup> See *Dodge v. Ford Motor Co.*, 204 Mich. 459, 507 (Feb. 7, 1919) (“A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end.”).

<sup>16</sup> Comm’r Elad L. Roisman, *supra* note 7.

<sup>17</sup> U.S. SEC. & EXCH. COMM’N, RESPONSE TO CONGRESS: NEGATIVE NET EQUITY ISSUANCE 6-7, 45 (Dec. 23, 2020), <https://www.sec.gov/files/negative-net-equity-issuance-dec-2020.pdf>.

<sup>18</sup> Federal Reserve System, Revised Temporary Addendum to SR letter 09-4: Dividend Increases and Other Capital Distributions for the 19 Supervisory Capital Assessment Program Bank Holding Companies (Nov. 17, 2010); Federal Reserve System, Comprehensive Capital Analysis and Review: Summary Instructions and Guidance (Nov. 22, 2011) available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20111122d1.pdf>.

“...protects the financial safety and soundness not only of individual firms, but also of the entire financial system. By increasing the potential for market manipulation and speculation, as well as administrative and compliance burdens, and decreasing the practical ability of Regulated Banking Institutions to effectively use share repurchases, the Proposals would disincentivize the use of share repurchases and contradict the Federal Reserve’s policy. Alternatively, if the Proposals are finalized without modification, to the extent Regulated Banking Institutions do continue to use share repurchases, the additional and frequent disclosure could make these issuers less willing to deviate from business-as-usual practices, even in situations where deviations could have financial stability benefits. In this way, the Proposals could create similar problems with respect to share repurchases...”.

If the SEC refuses to address these issues with the Proposals, it should carve financial institutions out of their application to obviate contradicting the Federal Reserve policy, and needlessly harming financial institutions and their investors and financial stability.

**III. The “granularity” of the information that issuers would disclose under the rule would make the disclosures counterproductive. There would be an inverse relationship between the quantity and quality of the information disclosed.**

Attempting to narrow the information gap with the surplus of data required under the proposed rule will create a greater imbalance of power and knowledge between everyday investors and predatory short sellers. As Commissioner Hester Peirce explained in her dissenting statement, the Proposal channels the “rage against repurchases in a way that only a regulator can—through painfully granular, unnecessarily frequent disclosure obligations.”<sup>19</sup> Requiring issuers to make daily repurchase disclosures within one business day after executing a buyback and drastically increasing the amount of information required to be disclosed is needlessly burdensome and an ineffective method of fostering informational symmetry.

Unlike other issuers, shareholders already have significant additional information regarding the capital actions of financial institution issuers due to the public information available about regulatory capital requirements and the regulatory capital planning process applicable to them. Shareholders not only have access to the detailed capital and capital planning regulations with which financial institutions must comply, but also to disclosure about their performance under supervisory and, if applicable, firm-run stress tests. Furthermore, the regulatory oversight applicable to financial institutions’ capital planning processes and actions already act as a constraint on any of the manipulative activity that the Proposal seeks to address, rendering the proposed additional disclosure superfluous.<sup>20</sup>

---

<sup>19</sup> Comm’r Hester Peirce, *supra* note 1.

<sup>20</sup> It is not entirely clear that the additional disclosure included in the Proposals would actually reduce the inappropriate activities cited in the Proposals, such as real earnings management or increasing executive

Furthermore, for financial institutions, the proposed additional disclosure could chill competition or run afoul of rules pertaining to confidential supervisory information. Uniquely, capital strategy and planning are fundamental to competitive strategy in the banking industry. Dictating detailed disclosure by financial institution issuers of critical elements of their capital management policies and practices would decrease competition in the banking industry. We also agree with the comment in the BPI/ABA Letter that:

“[R]equiring disclosure of target pricing information, or information that could allow for the calculation of target pricing information, even in a general sense, would contribute to the possibility of front-running and market manipulation regardless of the issuer’s industry. For similar reasons, the SEC should not further expand the proposed additional disclosure under Item 703 of Regulation S-K in any of the ways contemplated in Question 17 of the Share Repurchase Proposal.”

IBC appreciates the opportunity to address our concerns with the Proposal. For the reasons stated above, IBC urges the SEC to reassess the utility of the Proposal in light of its likelihood to equip short sellers with information that will advance their manipulative practices, disregard for the valid corporate reasons a company engages in share repurchases, and overly burdensome nature that will inhibit the ability of corporations to use buybacks as a tool for capital allocation and shareholder return and create anticompetitive effects. Thank you for your consideration of this letter.

INTERNATIONAL BANCSHARES CORPORATION

Sincerely,



Dennis E. Nixon  
President and CEO

---

compensation, but, even assuming the Proposals would reduce these activities with respect to non-Regulated Financial Institution issuers, for the reasons discussed herein, existing disclosures should already limit these activities with respect to Regulated Financial Institution issuers.